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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 28

RAPHAEL KONIGSBERG, PETITIONER,

STATE BAR OF CALIFORNIA, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

PETITION FOR CERTIORARI FILED JANUARY 26, 1960
CERTIORARI GRANTED MARCH 7, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 28

RAPHAEL KONIGSBERG, PETITIONER,

vs.

STATE BAR OF CALIFORNIA, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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[fol. 1]

**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

LA Number 23266

RAPHAEL KONIGSBERG, Petitioner,

vs.

**THE STATE BAR OF CALIFORNIA AND THE COMMITTEE OF BAR
EXAMINERS OF THE STATE BAR OF CALIFORNIA, Respondents.**

**APPLICATION OF PETITIONER FOR ADMISSION TO THE PRACTICE
OF LAW—Filed June 26, 1957**

**To the Honorable Justices of the Supreme Court of the
State of California:**

The Supreme Court of the United States having returned the mandate to this Honorable Court in the matter of *Konigsberg v. State Bar of California, et al.*, 353 U.S. 252, petitioner Raphael Konigsberg hereby moves that this Honorable Court admit him to the practice of law as a member of the State Bar of California.

Petitioner is informed and believes that this Honorable Court has no formal session scheduled in the city of Los Angeles prior to the month of October, 1957, nor in the [fol. 2] city of San Francisco prior to the month of September, 1957. It is respectfully requested therefore that petitioner be allowed to appear for formal admission to the practice of law at some convenient early summer meeting of this Court in either Los Angeles or San Francisco.

Dated: June 24, 1957.

Respectfully submitted,

Edward Mosk, Attorney for Petitioner.

[fol. 3]

AUTHORITIES IN SUPPORT OF MOTION

Konigsberg v. State Bar of California, 353 U.S. 252, (Re-hearing denied 6/17/57);

Schware v. Board of Governors, etc., 353 U.S. 232;

In re Patterson, United States Supreme Court, (decided May 13, 1957);

Brydonjack v. State Bar, 208 Cal. 439, 281 P. 1018;

Ex Parte McCue, 211 Cal. 57, 293 P. 47;

Rule 41, Rules, Supreme Court of California.

[fol. 3a] Affidavit of Service by Mail (omitted in printing).

[fol. 4]

[File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

L.A. No. 23266

RAPHAEL KONIGSBERG

v.

THE STATE BAR OF CALIFORNIA

ORDER VACATING DECISION FILED APRIL 20, 1955 AND REFERRING MATTER TO COMMITTEE OF BAR EXAMINERS, ETC.
—Filed July 10, 1957

Pursuant to mandate of the Supreme Court of the United States, it is ordered that the decision of this Court, filed April 20, 1955, be vacated, and the matter of admitting Raphael Konigsberg to the practice of law in all the courts of this State is referred to the Committee of Bar Examiners for further proceedings.

Carter, J. is of the opinion that the application of Raphael Konigsberg for admission to practice law in all of the courts of this state should now be granted.

Gibson, Chief Justice.

[fol. 5] [File endorsement omitted]

Filed Nov. 19, 1957

William L. Sullivan, Clerk, By R. J. Bell, L. A. Deputy.

[fol. 8]

BEFORE THE COMMITTEE OF BAR EXAMINERS
OF THE STATE BAR OF CALIFORNIA

In the Matter of
RAPHAEL KONIGSBERG

Application for Admission to Practice Law in California

Transcript of Hearing—September 21, 1957

APPEARANCES:

Sharp Whitmore, Esq., Chairman
Vincent H. O'Donnell, Esq., Vice-Chairman
George Harnagel, Jr., Esq., Member
Forrest E. Macomber, Esq., Member
William M. Maxfield, Esq., Member
Thomas H. McGovern, Esq., Member
John B. Surr, Esq., Member
Goscoe O. Farley, Esq., Secretary
Jack A. Pollatsek, Esq., Legal Assistant
William Tucker, Esq., Examiner for Bar Examiners
Raphael Konigsberg, Applicant
Edward Mosk, Esq., Attorney for Applicant
Marion Farrell, C.S.R., Reporter

Chairman Sharp Whitmore: I think the two of you have met most of the members of the Committee, perhaps not all. At the far end of the table is Mr. Tucker, who will be the Committee's Examiner in this case. Next is Mr. Surr, a member of the Committee. Mr. McGovern, whom I think you met before. Mr. Maxfield. On my right, Mr. O'Donnell. My name is Whitmore whom you met, I think. On my left [fol. 9] is Mr. Farley whom I believe you know. Mr. Harnagel from Los Angeles is a member of the Committee. He is new to the Committee since you were last before us, Mr. Konigsberg. On his left is Mr. Macomber from Stockton who I think too is a new one. On his left is Mr. Pollatsek who is the Legal Assistant to the Committee. Mr. Konigsberg and Mr. Mosk.

Now, Mr. Mosk, because of the passage of time since the last appearance by you and Mr. Konigsberg before the Committee there have been as I have just indicated some changes in the composition of the Committee. Mr. Macomber, Mr. Surr and Mr. Harnagel have not participated in any of the hearings during which you and Mr. Konigsberg have been present. I am going to propose that in order that we not have to duplicate subject matter previously covered in other hearings that if it is agreeable to you we should like to consider the transcripts and exhibits of the previous Committee and Subcommittee hearings as part of the record here, and if it is agreeable to you to have Mr. Macomber, Mr. Surr and Mr. Harnagel participate with the rest of the Committee in connection with any determination, their participation to be based on this hearing today and reading and study of the previous transcripts and exhibits.

Mr. Stanley Mosk: We have no objection to that procedure, Mr. Chairman.

[fol. 10] Chairman Whitmore: I have generally outlined to Mr. Mosk the scope of the proposed hearing today. I should like to point out to Mr. Konigsberg, as well as to Mr. Mosk, that the functions of the Committee of Bar Examiners are really two-fold: First to investigate in connection with the requirements for admission to practice set forth in the Business and Professions Code; and second to make determinations. As a result of our two-fold pur-

pose, particularly our function of investigation, we believe it will be necessary for you, Mr. Konigsberg, to answer our material questions or our investigation will be obstructed. We would not then as a result be able to certify you for admission. If you have questions we shall certainly be happy to have your counsel or you address them to us. We should certainly make every effort to limit our questions to those which are material ones.

I don't know, Mr. Mosk, how you would prefer to proceed. Would you prefer to have us ask what questions we feel we have of Mr. Konigsberg, or is there something you would prefer to go into prior to that?

STATEMENT BY MR. MOSK

Mr. Mosk: If I might, your Honor, Mr. Chairman I believe would be proper terminology, I would want to make a formal motion with a few remarks to precede that motion if I may. I, of course, did speak with the Chairman on the [fol. 11] phone earlier in the week so that I am not unfamiliar with the procedure that you plan to follow. It is our position, however, that no such proceedings are required at this time; that we have a decision by the United States Supreme Court in Konigsberg versus State Bar, and that that decision, together with the decision in the Schwabe case, decided the same day as the Konigsberg decision, and the series of other decisions which the court handed down in the present term, the term just passed, make it both unnecessary and we would say a denial of due process to proceed to have any further proceedings other than a decision by this Committee to recommend his admission to the Bar.

It would be our position that under the mandate of the Konigsberg case in which the court indicated that the State of California, the State Bar, should take action not inconsistent with the decision in the Konigsberg case; that the only action which could be taken which is not inconsistent with that decision would be an order for his admission.

I am sure that every member of this Committee has thoroughly read the decision, perhaps even more times than I have, but I would like to point out some of the factors in the decision which seem to me to militate against any action other than a straight order for his admission.

[fol. 12] I would point out that the several comments by the court in the decision—certainly the very concluding one—seems to be almost determinative of the case as we see it. The court in the *Konigsberg* case said: "In this case we are compelled to conclude that there is no evidence in the record which rationally justifies a finding that *Konigsberg* failed to establish his good moral character or failed to show that he did not advocate forceful overthrow of the government." Now, with this positive finding on the part of the Supreme Court, and their follow-up statement, which is then that the action should be taken not inconsistent with their finding, it is our position that the court has in effect said and that the mandate of the court is that the State of California should admit Mr. *Konigsberg* as a lawyer to the Bar of California.

However, there is additional language, and it seems to us at least that all of the conclusions which the court has reached, both in the *Konigsberg* decision and in the *Schware* decision, which is certainly a companion case and deals with closely related facts, would militate against any action or any questions, and we, I think, at this point concede with the possible exception of some positive evidence of wrong-doing perhaps since the last hearing, if there were such evidence perhaps that might become a [fol. 13] basis for denying him admission, but certainly on the basis of this record and the good moral character shown we would submit there is no action to be taken.

Now, one of the points that was certainly raised at the earlier proceedings and, certainly all the way through the court proceedings, as this case worked its way up to the United States Supreme Court, was this whole question of privilege against right so far as the admission to the Bar. Now, it seems to us that this issue has been firmly laid to rest for once and for all, and that without regard to whether we use the terminology of privilege or right so far as becoming a lawyer is concerned. In both the *Konigsberg* case and the *Schware* case it clearly indicated that arbitrary action, whether it is a privilege or a right, arbitrary action on the part of the State Bar would be a denial of due process and therefore a denial of the rights of petitioner and would have to be overturned by

the courts. And this was true in both Königsberg and in Schwere.

The court in Königsberg, you will recall, points out that, "The question is whether on the whole record a reasonable man could fairly find that there were substantial doubts about Königsberg's honesty, fairness in and respect for the rights of others and the laws of the State or nation." And the court on the basis of the whole record concluded that there could be no reasonable doubt.

[fol. 14] There again we submit there is no basis for further proceedings, because the mandate of the court was to take action not inconsistent with its decision, and they have resolved on the facts of the case the question as to whether there could be reasonable doubt, and they have resolved it in favor of Mr. Königsberg.

Now, the areas which you have indicated that certain questions might be asked which if not answered would obstruct the work of the Committee in its investigating function, here again the decision has, I think, resolved the area of right on the part of the Committee to proceed. The decision very clearly indicated that the key to the question here is not whether he has failed to answer a specific question, but in a sense the key is whether even if the question were answered one way or the other whether this could become a basis for denying him admission to the Bar. Perhaps I am assuming something, but I think it is a fair assumption that the interest of the Committee is in some of the questions that were not answered in the first proceeding. In this connection the court both in Königsberg and Schwere indicated that even if the answer to the question of, "Are you a member?", "Have you ever been a member of the Communist Party?" were answered in the affirmative that this in and of itself would not be a sufficient basis upon which this Committee could [fol. 15] predicate a decision adverse to Mr. Königsberg.

Now, assuming this to be the situation there would then seem to be no purpose in carrying the question of Mr. Königsberg along these lines any further, because the key problem so far as this Committee is concerned is the question of does he believe in force and violence, and under 6064.1 this question has been answered. The opportunity

to establish any affirmative showing that there was any belief on his part has been provided in the record, and nothing has been shown or could anything be shown of any action at any time in the man's life indicating a belief in overthrow of the government by force and violence, so that where the situation arises that if the question were answered either way it could not be determinative of the issues here.

We submit that there is no point in proceeding further, and that the court by its decision in both *Konigsberg* and *Schwartz* has indicated that the record even in its present status, and with the lack of answer to the question has been resolved in a manner favorable to Mr. *Konigsberg*. We would submit there is no point or relevancy to proceeding with further questioning. On this basis, and of course implicit in my entire comment on this is, of course, that it is our position and was at the previous proceedings and of course is now that the nature of these questions [fol. 16] falls within the First Amendment protection, as included within the Fourteenth Amendment, and that the balance of the reasons why the Committee seeks to ask the question against the important protections which the First Amendment is intended to provide must weigh the balance on the side of the protections, and this, of course, ties back to my previous point that even if you got the answer to the question, which we say is within this protected area of the First Amendment, you will have availed yourselves nothing in proceeding further to make the determination of the good moral character, because the answer, even if yes, would not without more, provide a basis for denying him the right to practice law.

And so we submit basically, if it please the Committee, that we have the law of the case, and the law of this case has been established by the Supreme Court, and that in this day, and particularly today where the challenge to the court in other parts of the country is certainly looked upon with considerable disfavor by, I think, a substantially large proportion of the population, I think it is a serious thing to now conduct further hearings in the light of what seems to have been a clear mandate from the Supreme Court to act in a particular manner.

I think that one cannot read the decision in *Konigsberg and Schwere* without coming to only one conclusion, and [fol. 17] that is that the court examined these facts, and looked it over, and they said, "Here is a man on the record here, and on the basis of his life—" as a matter of fact, the language that they used, I am sure you recall it: "... is not an adequate basis for concluding that he is disloyal or a person of bad character. A lifetime of good citizenship is worth very little if it is so frail that it cannot withstand the suspicions which apparently were the basis for the Committee's action."

I think that the whole principle of law involved here, the whole principle that the Supreme Court of the United States has acted in this matter, that it has handed down a mandate, that the obvious intent of that mandate was that this man should be admitted, and I submit and therefore move to the Committee that without further proceedings this Committee should act in a manner not inconsistent with the decision which we believe must be an action to recommend his admission.

Mr. Maxfield: Mr. Mosk, the Committee of Bar Examiners does not admit anybody to practice law. Shouldn't your motion be directed to the court?

Mr. Mosk: I have directed such a motion to the court, and the court acting on that simply sent it back to this Committee. Now, it may be that the court following its usual procedure of only acting where there has been a recommendation for the Committee, it is difficult for any [fol. 18] one to guess what was in the minds of the Supreme Court of California. We know that at least Justice Carter was of the opinion that Mr. *Konigsberg* should be admitted immediately, because he attached this comment to the action of the court in sending it back here, but I see no reason to presume from the return of the matter here that the Supreme Court of California does not agree with my position. One guess is as good as another, I think, as to what they had in mind in sending it back here, but I did make the motion there, and their action was to send it back here. But I did make the motion there, and their action was to send it back here.

Chairman Whitmore: Your motion has been heard and will be noted by the Committee, Mr. Mosk. May I inquire of you whether or not in view of your motion it is your position that Mr. Konigsberg is not available before the Committee today for questioning? Is that the substance or the effect of your motion?

Mr. Mosk: No, it certainly is not. I would like to at least have the record be clear as to whether my motion has been denied, and if it is denied we of course will remain, and Mr. Konigsberg will submit himself to all questions.

Chairman Whitmore: Then it is your request that the motion be acted upon by the Committee as a preliminary? [fol. 19] Mr. Mosk: That would be my request.

Chairman Whitmore: May I suggest, Mr. Mosk, you leave the Committee in executive session and we shall consider the motion which you have made.

(Messrs. Mosk and Konigsberg, and the reporter then left the room while the Committee went into executive session, following which they returned.)

Chairman Whitmore: May we go back on the record? Your motion, Mr. Mosk, has been denied by the Committee at this time. We will engage in further proceedings in conformance with the order of the Supreme Court of the State of California, the order of July 10 in this case. I would like to read that order into the record. It is in Case No. LA-23266 in the Supreme Court of the State of California in Bank, Raphael Konigsberg v. State Bar of California. "Pursuant to mandate of the Supreme Court of the United States, its order that the decision of this court, filed April 20, 1955, be vacated, and the matter of admitting Raphael Konigsberg to the practice of law in all the courts of this State is referred to the Committee of Bar Examiners for further proceedings. Carter is of the opinion that the application of Raphael Konigsberg for admission to practice law in all of the courts in this State should now be granted. Signed Gibson, Chief Justice."

Are there any other matters, Mr. Mosk, before we proceed? [fol. 20]

Mr. Mosk: If you are then proceeding, Mr. Chairman, we do have one witness that I asked to come for just a very few questions, and it might be for his convenience,

if it doesn't inconvenience the Committee, if we heard him first so that he could then go about his business.

Chairman Whitmore: Without objection from members of the Committee we shall hear from your witness, Mr. Mosk, now.

(Mr. Herbert D. Tobin then took the witness stand.)

HERBERT D. TOBIN, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Mosk:

Q. Will you state your name to the reporter, please?

A. Herbert D. Tobin, T-O-B-I-N.

Q. Mr. Tobin, where do you live?

A. 13727 Mulholland Drive, Beverly Hills.

Q. And what is your business or occupation?

A. Builder.

Q. How long have you been engaged in that business?

[fol. 21] A. Twenty-one years.

Q. And has that work been at all times in Los Angeles or in other parts of the country?

A. No, I learned the trade from my father in New England; Boston, in 1936, and worked steadily at it until 1945 when I came to California, and have worked here for the past twelve years steadily as a builder.

Q. Will you tell us your educational background.

A. I graduated from Boston Latin School in 1930, Harvard College in 1935, took one year of law school, and with all due respect to you gentlemen found Mr. Willison and I disagreed about certain things. In fact he told me if it was justice I wanted I should go across the street to the theological school, he only taught law. So I took my credits at the end of the year and never went back. I got mail from them for many, many years afterwards, why I didn't come back, but I never did. I took various other courses at Tufts College in Engineering, various phases of engineering and construction engineering, and

some engineering courses at M.I.T., the Franklin Institute there in various phases of construction problems and engineering.

Q. Could you tell us, Mr. Tobin, just a little bit about your business activities in Los Angeles in the last few [fol. 22] years, what has been the nature of your building activity?

A. We have built tract houses all over the metropolitan area and in Orange County. Our volume grew to at one point about 950, almost 1,000, houses a year. We are slowing down very drastically from that point right now. The building business has problems.

Q. Mr. Tobin, in the course of your activities in the building business have you had occasion to meet Mr. Raphael Konigsberg?

A. Yes.

Q. When was that, approximately?

A. About two and a half years ago.

Q. Has Mr. Konigsberg performed any services for you in the last two and a half years?

A. Yes, we hired him as Office Manager. We had a very serious administrative problem, heavy work load, paper, large staff, and not adequate control. His qualifications were excellent for that job. We hired him, and he has worked for us since then.

Q. Now, how close contact have you had with him in that two and a half years?

A. Very intimate. He works in the next office from mine, and he is the top executive officer in the office. I talk to him at least once every half hour, if not oftener.

[fol. 23] Q. Now, in the course of this two and a half years, Mr. Tobin, have you had an opportunity to observe Mr. Konigsberg's character, in so far as his honesty, his integrity, his ethics, his morals? Have you had a chance to form an opinion as to Mr. Konigsberg in connection with these characteristics?

A. I have.

Q. Could you tell us what that opinion is?

A. It is almost embarrassing to state because I have to use only the very extremest terms which is a very rare thing, and it must sound almost like an exaggeration. I

think he is probably the most honest, both intellectually as well as legally the most honest, man I have ever met. That was one of the things that impressed me in the very beginning when I hired him, and it has been reaffirmed by our experiences in the past two and a half years. His ethics and his attitudes, his sincerity, his loyalty is beyond all reproach.

Q. Have you had an opportunity to give him responsibilities in connection with his work for you?

A. Oh, most certainly. He has full power to sign checks on our general account, which at times may have as much as a quarter of a million dollars in it. It is a joint signing with others in our company, but there are very, very few others. And he has complete charge of all day by day office [fol. 24] problems. Anyone that calls our office, and we have thousands of calls a day, if they have any problem which the girls or subordinates can't solve it is automatically referred to him, and he has complete authority to use his best judgment in solving it.

Q. Have you made him an officer of any of your corporations under which you conduct your business?

A. We have. He is a Vice-President of most of the companies.

Q. And that is a number of different corporations, I take it.

A. Yes. We naturally have to have different companies for different jobs, because there are multiple problems and divisions of interest.

Q. In the course of two and a half years have you had any indication of any impediment to Mr. Konigsberg's moral character that you have been able to observe?

A. No. There is an interesting sidelight to a situation of this sort. It might conceivably throw some light on it for your purposes. He has leaned by obvious natural inclination so very, very far to the side of fairness and ethical attitudes beyond the usual that sometimes it acts as a handicap from strictly a business point. I have difficulty with him on rent collections, and things of that sort. His tendency is to exceed what I consider good bounds of business judgment and taking firm attitudes towards [fol. 25] collecting money. There seems to be an extra

measure of consideration given to the other fellow. Maybe I am being too businesslike, too arbitrary, but if I have ever had any fault to find that is the only one, and I am not sure in my own mind if that is a fault.

Q. Have you observed in the course of the two and a half years any indication on the part of Mr. Konigsberg of a belief in the overthrow of the government by force and violence?

A. No, that is completely childish.

Mr. Mosk: No further questions. Thank you, unless the Committee has questions.

Chairman Whitmore: Does any member of the Committee have questions of Mr. Tobin? No questions. Thank you, Mr. Tobin, for coming in.

Mr. Mosk: Thank you, sir.

(Mr. Tobin was then excused.)

Chairman Whitmore: Mr. Mosk, anything else?

Mr. Mosk: I have nothing further.

Chairman Whitmore: The Committee has some questions of Mr. Konigsberg. Mr. Konigsberg, may I ask that you stand and be sworn.

(Mr. Raphael Konigsberg then took the witness stand.)

[fol. 26] RAPHAEL KONIGSBERG, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Tucker:

Q. Mr. Konigsberg, since the date of your application for admission to practice was filed, I believe, or signed on June 29, 1953, have you, as a member of any profession or organization or holder of any office, been suspended, disbarred or otherwise disqualified?

A. I am not sure that I— You mean any job, for example?

Q. Yes.

A. Have I been fired, is that what you are saying?

Q. Disbarred, suspended or otherwise disqualified.

A. No.

Chairman Whitmore: May I ask that you answer vocally. The reporter cannot take a shake of your head down.

A. If I understand the question it is whether I was fired, suspended, disbarred.

(The reporter then read Lines 6 to 10, inclusive.)

A. No, I have not been disbarred, disqualified, or suspended. [fol. 27] If you are speaking of a job that vanished because the organization was dissolved, there was such a thing.

By Mr. Tucker:

Q. Have you ever been reprimanded, censured or otherwise disciplined?

A. In any job or office?

Q. This is in the context of the previous question.

A. Since the date you mentioned?

Q. Yes.

A. No.

Q. Have any charges or complaints, formal or informal, ever been made or filed against you, or have any proceedings been instituted against you?

A. You mean lawsuits?

Chairman Whitmore: Again in the context of the former question, Mr. Tucker?

Mr. Tucker: That is correct.

A. You mean have I ever been sued since that date?

By Mr. Tucker:

Q. Since that date.

A. No, I have not been sued, not to my knowledge, unless there is a Small Claims action pending against the Tobin Company and me jointly.

Q. Not in your individual capacity?

A. No.

Q. In response to the other question, have any charges [fol. 28] or complaints, formal or informal, ever been made or filed against you?

A. Not to my knowledge.

Q. Since the date of your previous application have you held a bonded position?

A. When you say previous application you are referring to the time I filed to take the Bar examination?

Q. Yes, referring to the application which you signed on June 29, 1953.

A. Have I ever applied for a bond?

Q. Have you held a bonded position?

A. You mean where a bonding company gives a bond for some fiduciary position?

Q. Right.

A. I don't recall. I think that I did make— Well, I filed for a bond for the company, for the Tobin Company, but not my own. I don't remember. Maybe it was for myself as Office Manager. It could have been. I don't remember.

Q. To your knowledge has anyone attempted to recover on this bond?

A. Oh, no, if there has been a bond. I don't know. Not to my knowledge has there ever been such actions where I have been involved.

Q. Since the date of your previous application have you [fol. 29] served in the armed forces of the United States or of any other country?

A. Not at all.

Q. Since the date of your previous application have you been summoned, arrested, taken into custody, indicted, convicted or tried for or charged with the violation of any law or ordinance or the commission of any felony or misdemeanor, including traffic violations?

A. I think I did get a ticket for turning left at Echo Park and Sunset about six or seven months ago. I didn't go to court, I paid through the Auto Club.

Q. Is that the only type of crime you have been charged with?

A. Yes. I have never been charged with any crime.

Q. Have you pleaded guilty to any charge or violation of any law or ordinance or have you committed any felony or misdemeanor, including traffic violations? You answered the traffic violations.

A. I suppose by paying the fine I pleaded guilty to that, but there has been no other action of any other kind.

Q. That is the only action?

A. Yes.

Q. Since the date of your application have you been requested to appear before any prosecuting attorney in [fol. 30] any matter?

A. No, not before any prosecuting attorney. I have never appeared before any prosecuting attorney in my life.

Q. We are aware of your appearance before the House Un-American Activities Commission on June 29, 1955. Other than that, Mr. Konigsberg, have you appeared before any investigative agency in any matter?

A. No, not to my knowledge. I don't recall any.

Q. Since the date of your previous application have you been a party to or had or claimed any interest in any civil proceedings, including divorce?

A. No.

Q. Since the date of your application have you been declared a ward of any court, or adjudged an incompetent?

A. I have never been involved in any legal action since or before or anything other than that traffic violation, to my judgment.

Q. You have never been committed to any institution?

A. No, not to my knowledge.

Q. Since your previous application have you been charged with fraud, either formally or informally?

A. No.

[fol. 31] Q. Since the date of your previous application have you been adjudicated a bankrupt, or has a petition in bankruptcy been filed by you or against you, either alone or in association with others?

A. No.

Q. Have you been brought in as a party to any bankrupt proceedings?

A. No. There have been a couple of bankruptcy proceedings of home buyers who therefore were unable to make payments. I wasn't, and the company really wasn't involved either.

Q. You were not a party?

A. No.

Q. Have you been sued or threatened with suit by the receiver, trustee, or other authority of any bankrupt estate, for unlawful preference, conspiracy to conceal assets, or any other fraud or offense, whether or not punishable by criminal law?

A. No, sir.

Q. Are there any unsatisfied judgments against you?

A. No, sir.

Q. Are you in default in any way in the performance or discharge of any duty or obligation imposed upon you by decree or order of any court, including alimony and support orders and decrees including those barred by the [fol. 32] statute of limitations?

A. I don't owe anything past due. I owe a couple of payments on my car, and an account at the May Company, nothing past due.

Q. Since the date of your previous application for admission would you state what occupations, businesses or professions that you have been engaged in, in addition to your employment with Tobin Homes?

A. Let's see, I took the Bar examination in October of '53, and quite frankly because of the action of this Committee I could find no employment until I secured self-employment in the nature of leasing a, well we call it a surgery. Perhaps the Committee should know there are these private surgeries which are surgical rooms and registered nurses available for doctors for minor operations in medical buildings. Since I had much acquaintance with doctors and nurses, the people who operated this clinic on Wilshire Boulevard suggested they lease it to me on an option basis and see if it would work out. I leased it for two months, and I believe it was February and March or January and February, I am not sure, of '54. It didn't work out. That is there were a lot of small hospitals being built in the area, and the doctors preferred to go there because they had better equipment. It was not a paying proposition and I gave it up after two months. And then I think there is another two months that passed, and I [fol. 33] secured employment with an organization known as the Ormsby Village for Youth Foundation, and this was a trust, rather a trust gave the money to set up this Foun-

dation, the purpose being to operate children's camps. It was for children of underprivileged parents, I mean parents of low income. I worked with them from roughly April of '54 until I think it was October of the same year, '54. And then again I was unemployed for the same reasons, and then in May of '55 I secured employment with the Tobin Company, which I have kept since.

Q. Mr. Konigsberg, you said you were unemployed for the same reasons. What were those reasons?

A. The reasons are because of the action of the Committee denying me a license I couldn't secure employment with attorneys which I preferred, so I had to seek other employment.

Q. What was the reason for the termination of your employment at Ormsby?

A. The organization was dissolved.

Q. The only period unaccounted for is October, '54 to February of '54. You were unemployed?

A. Yes, that is what I said at the first I was unemployed.

Q. Were you living here in Los Angeles?

A. Yes, at my home.

Q. Since the date of your previous application have you [fol. 34] been dismissed, discharged or requested to resign by any employer?

A. No. I have only had the two employers. One the organization dissolved, and the other one you heard a few minutes ago.

Q. All right, has there been any incident of a derogatory nature which occurred in your life since the date of the previous application for admission to practice, not called for by the preceding questions, that may have some bearing on your character and fitness to practice law?

A. Not to my knowledge.

Q. Mr. Konigsberg, are you now or have you ever been a member of or affiliated with any organization a purpose of which at the time of your membership or affiliation is or was to advocate the overthrow of the constitutional form of government of the United States or of this State by force, violence or other unconstitutional means?

A. Mr. Chairman, the question, of course, is similar to the question asked me four years ago, though phrased some-

what differently, and while I think we all change somewhat in four years even at this age in our thinking, the basic principles that I established in that case and in those hearings that questions regarding one's political thinking [fol. 35] are protected by the First Amendment and have no bearing whatsoever on one's moral character, have, I think, pretty well been determined by the Supreme Court opinion in my case. And certainly having the Supreme Court vindicate my opinion and principles which are now in effect, and in a sense the law of the land because of the Supreme Court opinion, I could hardly be expected at this point for expediency to give up principles that have been upheld by the highest court of our country. However, I appreciate very much and in all sincerity the problem that this Committee faces, and that the members of the Committee are no doubt as concerned with principles and their own conscience and the law of the land as I am. O

I would like to in order to be able to help this Committee, and I do want to help the Committee in the discharge of its duties, both as a citizen and as a lawyer, I would like to understand very clearly what is encompassed in this question, because it seems to me we have got to have an understanding of terms. There has been too much kicking around, to use a loose phrase, of Communist Party, of force, and violence, and overthrow of the government, and I am happy to say that a greater degree of sanity seems to be returning to public counsels in this matter despite the action of Southern authorities with respect to other Supreme Court opinions.

Now, if you are asking me whether I as a person ever belonged to an organization that advocated the over-[fol. 36] throw of the government by force and violence, according to my knowledge of it, or whether I personally ever advocated this or ever did anything such as throwing a bomb or writing a leaflet or speaking of advocating the overthrow of the government by force and violence, or even whether I even attended a meeting at which force and violence was proposed as a course of action, the answer is no. I personally have never been a member of an organization which to my knowledge engaged in such advocacy. I never could be or would be. I never did a

thing in that direction I made clear in the prior hearings. But if you are asking me whether I as a citizen have in the course of normal civic or political duty, describe it as you will, because I think the record does make clear that I have a strong civic conscience, if what you mean by your question is did I ever join with people who were known to be members of the Communist Party, if that were the case, or whether I personally joined the Communist Party as a legal political organization in this State, which the Supreme Court, in my opinion, makes clear it was at the time, then I refuse to answer that phase of the question, because this is in the area protected by the First Amendment from ages past, and certainly reaffirmed in recent decisions, including my own.

Now, having said this and stated this emphatically there is really little else I can say. Any other type of question [fol. 37] similar to this I can only give the same type of answer, because it seems to me whatever doubts you may have about my character it is the rare applicant who can come before a Committee of Bar Examiners with what is in fact a testimonial from the Supreme Court of California.

Chairman Whitmore: The question, as I understood it, dealt with whether you were ever a member of an organization which to your knowledge at the time you were a member advocated the overthrow of the government. I believe you answered that question no.

A. That is right. I wanted to add the further thought, because I think it is part of the picture. I think the record makes very clear whatever you may think of those principles that I have tried to live a principled life, and that being the case you can hardly ask me as a matter of conscience or a matter of principle to give up various principles. This would be committing on my part an immoral act. I doubt very much that the Committee intends to take the position that to prove his good moral character an applicant must commit what to him is an immoral act.

Chairman Whitmore: The question has been asked and answered. Have you other questions?

By Mr. Tucker:

Q. Are you now or have you been a member of or affiliated with any group, association or organization which at the time of your membership or affiliation lent or lends [fol. 38] support to any organization or movement advocating the overthrow of the constitutional form of government of the United States or of this State by force, violence or other unconstitutional means?

By The Witness:

A. I think my previous answer covers it. I will only reaffirm to my knowledge I have never been a member of such an organization or group, a part of an organization, or however you want to phrase it. I think this would clarify the matter. May I say that I think you are rightly concerned with matters of advocacy of the overthrow of the government, but it seems to me you had the opportunity in the previous hearings, and you have it now if you have evidence of any illegal acts on my part, then they should be brought forward, and give me a chance to answer them, and I will be happy to answer them, not proceed on the basis of mere suspicions. If you have acts, or evidence of any acts, I ask you now to bring them forward so I can answer them.

Chairman Whitmore: Mr. Konigsberg, as indicated at the beginning of this proceeding, the Committee is really charged with two functions, one to investigate, and one to determine. Your counsel has asked the Committee, asked me, for an indication as to the scope and purpose of this hearing. I indicated to him what the scope and purpose is, and as a result you are aware of it. We are engaged in the function of investigating matters which we are [fol. 39] charged with the responsibility of determining under the law of the State of California. We have every intention and desire of carrying out that investigative duty consistent with the constitutional protections and freedoms that the United States and the California constitutions provide. We still have an obligation to investigate. I believe that we are charged with this responsibility as

it might apply to your application for admission. That investigation can be carried out in a number of ways. In connection with determining whether or not you meet the minimum standards to practice law as far as the knowledge of the subject of law is concerned, we have asked you questions in an examination, and you have given us answers. In connection with other requirements for admission to practice, as set forth in the Business and Professions Code of California, we have asked you to fill out an application, which you have done. Also as part of our investigation and your satisfying each and all of these requirements to practice law we have called you before the Committee. We have asked questions of you. We are merely now engaging in that investigation which we have engaged in by having hearings, by having you fill out applications, and by asking you to take an examination before. Now, this is part of that same function. If we, Mr. Konigsberg, at this point had someone who would testify that such and such was not the case with respect to an answer that you have given, we [fol. 40] would feel it incumbent upon us at this time or at another hearing to bring that person before you and have testimony introduced into the record in order that you would have the right to cross examination through your counsel. We have not completed our investigations. I am sure you realize from the questions being asked that this is not necessarily a terminal hearing or proceeding. It may, very well be; it may not be. It depends entirely on the success with which our investigation as to matters covered by the statute is completed in the hearing today. I am speaking in this latter respect only with respect to myself as one member. I can't speak for the other six.

Mr. Tucker has some other questions of you. I would appreciate it if you would go ahead and ask them, and you answer them if you wish, or take whatever position you feel you wish to with respect to the questions he asks.

By Mr. Tucker:

Q. Mr. Konigsberg, have you been a member of the Communist Party at any time since 1951?

By the Witness:

A. Well, my previous answer applies. That is that phase of the answer where I say that if you are asking me about whether I as a citizen ever joined a group which was a legal party in the State of California then I refuse to answer, because that area is protected under the First Amendment [fol. 41] guaranteed by the Constitution, and in my interpretation Article I, Section 1 of the California Constitution. In this area you are not allowed to intrude.

Q. Then you refuse to answer?

A. I decline to answer on the basis of the rights guaranteed in those two constitutions, and the Supreme Court interpretation of those rights.

Q. Would your answer be the same with reference to 1952?

A. Yes, at any time.

Q. Up to and including the present time?

A. Including this minute.

Q. Mr. Konigsberg, it appears from your previous application for admission to practice that you were a member of the Board of Directors of the California Labor School in 1948. You testified on September 7, 1948 before the California Senate Fact-Finding Committee on Un-American Activities that you were a member of the Advisory Committee of the Los Angeles Division of the California Labor School. Were these identical bodies, or did you serve on both groups?

A. Well, I didn't hear two names mentioned, I thought just one.

Q. You referred to it as a Board of Directors on your application.

A. No, it was the Advisory Board. I guess I used the [fol. 42] wrong terminology.

Q. One group?

A. Yes.

Q. During the term of your membership on the Advisory Committee were you in a position to accurately know of the aims and purposes of the school and the activities in which the California Labor School was engaged?

A. At that time?

Q. At that time.

A. Well, as it so happens I think I attended two, perhaps three, meetings of the Board, but I can say I understood or I never would have joined the Advisory Board if I didn't know what they were doing. As I say though it was just for a very short period, two or three meetings. Then this organization was dissolved.

Q. Were any of such activities in furtherance of the purpose of the school to advocate the overthrow of the constitutional form of government of the United States or this State by force, violence or other unconstitutional means?

A. Not to my knowledge. I never heard any such discussion or any such language used.

Q. Thank you, Mr. Konigsberg. While you were a member of the Committee—

A. It was called an Advisory Board, I believe.

Q. While you were a member of such Advisory Board [fol. 43] did you know that the California Labor School, Incorporated, was listed as a subversive and a Communist organization by the Attorney General in letters to the Loyalty Review Board released on June 1, 1948, and September 21, 1948?

A. Not to my knowledge. I think by that time the organization was dissolved. It couldn't have been listed. I think we ought to clarify this, Mr. Tucker. The California Labor School had two branches, as I recall, one in San Francisco and one in Los Angeles. The Los Angeles division was dissolved just within a matter of weeks after that hearing. I think that was in '47 when I appeared before the Tenney Committee, if you will check the dates.

Q. I believe it was '48.

A. There hasn't been any Southern California Labor School since that date.

Q. Since 1947 or 1948?

A. Whatever the date of the hearing. It was several weeks, as I recall now, maybe it was several months, but it seemed to me it was shortly after the Tenney Committee hearing that the Southern branch of the Labor School was dissolved.

Q. The Tenney Committee hearing was held on September 7, 1948.

A. Well then it was '48, whatever date it was, but I [fol. 44] never attended any meetings after that hearing, to my knowledge, and I don't know and didn't know then that the school continued to exist after that date, but that, of course, is distinct from the school up North in San Francisco. Of course I never had any association with the school up in San Francisco. In fact I have only been to San Francisco once in my life.

Q. I have questioned you as to whether or not to your own personal knowledge the California Labor School had as a purpose the overthrow of the constitutional form of government by force, violence and other unconstitutional means. You have answered no.

A. No, not to my personal knowledge. I am certain that was the case.

Q. To your own personal knowledge did this organization engage in any other illegal activities?

A. Not to my knowledge at all. If I am not mistaken, Mr. Tucker, and this may help, wasn't that school certified for the G.I. Bill of Rights, and if so you could hardly be guilty of an illegal act.

Q. I don't know whether it was certified or not.

A. I think you will find that to be the case, I believe.

Mr. Tucker: I have no further questions, Mr. Chairman. [fol. 45]. Chairman Whitmore: Mr. Konigsberg, I think you will recall that I initially advised you a failure to answer our material questions would obstruct our investigation and result in our failure to certify you. With this in mind do you wish to answer any of the questions which you heretofore up to now have refused to answer?

By the Witness:

A. You mean at this hearing?

Chairman Whitmore: Yes.

A. No, I don't wish to change my answers in any way, Mr. Chairman. I think in all fairness we should understand this. The Committee has just said that failure to answer questions would obstruct your ability to make a determination, and I believe in the petition for a rehearing to the

Supreme Court, which was denied, Mr. Belcher stated that the efforts of the Committee were frustrated. I think that was the word he used. Now, I would like to understand in what way the Committee speaking through Mr. Belcher, and now through the Chairman, feels that they have been obstructed or frustrated, because actually you have as you yourself stated two functions, in effect to determine whether I have good moral character and whether I advocate overthrow of the government by force or violence, perhaps two parts of one function.

Chairman Whitmore: Let me explain one thing that may be helpful to you. I think you are aware, are you [fol. 46] not, of the legislation that was passed by the U. S. Congress in 1950 and 1954 with respect to the Communist Party and legislative findings with respect to its aims and purposes. Are you aware of the fact that the Communist Control Act and the Internal Security Act were passed in those two years? Mr. Tucker asked you questions concerning your membership in the Communist Party during the period and only during the period after the passage of the first of those two Acts. His question was have you been a member of the Communist Party since that time. Now, certainly you have a right—a constitutional right—to claim constitutional privilege if you wish, Mr. Königberg. I merely wish to point out in answering your question that the period of time covered by the question asked by Mr. Tucker was the period of time after which legislative findings as to this organization as a body had been made and adopted and became the law of the land.

A. Yes, of course I am aware of that, I repeat I don't wish to change my answer in any way, but I think the point I started to make does need some clarification, and I might add since you raise the point since the Supreme Court said, in my opinion, that even if proved membership in effect has no bearing on good moral character, I cannot see the relevancy of the question.

[fol. 47] Mr. McGovern: Didn't the court qualify that statement to membership in 1941?

A. Well, I don't recall the dates, but assuming even that they did it is the fact of membership that you are concerned

about as much as the specific period. Now, I think the more important point that you are making is this, and the one I was referring to by the word frustration, just how does this Committee feel it has been frustrated, and what are you frustrated in? You can't just say you are frustrated and pick up your marbles and go home, so to speak.

Chairman Whitmore: How can we make a determination with respect to the nature of your activities with the Communist Party if you were, assuming you were, a member if we have no basis for questioning you concerning them? You won't answer our question as to whether or not you were ever a member. That question in that respect would be a preliminary question, would it not?

A. You have asked me if I advocate the overthrow of the government, if I committed any illegal acts. I answered gladly. I never have, I don't now, and I never will. I am incapable of doing it.

Mr. O'Donnell: Suppose we don't believe you, don't you think we are entitled to ask you as to your association with the Communist Party and your membership with the Communist Party as part of our examination?

[fol. 48] A. You are entitled to ask me only with respect to phases of illegal activity. You cannot ask me or any citizen about his activities that are legal, that are protected under the First Amendment, under the part of normal civic activity. I don't believe you can, or I misread all the opinions of the Supreme Court, including the most recent up to today, because it seems to me that you have not been frustrated. You have been able to secure the information you need. You have to prove two things, whether I have good moral character, and whether I advocate the overthrow of the government by force or violence. I think the evidence in the record so far indicates that I have a fairly acceptable moral character, if not a good one, and I think it is a good one. The Supreme Court thinks it is a good one. Secondly, you have a right to ask me whether I advocate the overthrow of the government. I answered no, and invited you to submit any evidence of any acts indicating I did these illegal things. What else can you do?

Chairman Whitmore: If you answered the question, for example, that you had been a member of the Communist Party during some period since 1951 or that you were presently a member of the Communist Party, the Committee would then be in a position to ask you what acts you engaged in to carry out the functions and purposes of that party, what the aims and purposes of the party [fol. 49] were, to your knowledge, and questions of that type. You see, by failing to answer the initial question there certainly is no basis and no opportunity for us to investigate with respect to the other matters to which the initial question might very well be considered preliminary.

STATEMENT BY MR. MOSK

Mr. Mosk: I wonder if I might interject a legal approach to this problem? In California we have something of a legal history of the very type of question which the Committee is asking and for which there has been a declination to answer. We have the legislation 6064.1, and I think Mr. Konigsberg indicated, and I would indicate, there is some question as to whether this statute itself is constitutional, and for the record I would want to say that we would challenge the constitutionality as a violation of the Fourteenth Amendment. Since it is the law of California, there has been no declination on the part of Mr. Konigsberg to respond to this. He has responded to it fully, and is prepared to answer any other questions in this area. Now, there have been over the years in California any number of additional bills introduced directed specifically to the lawyer, and these bills have died at various stages of the legislative history. Some of them have been introduced within the State Bar organization and have been defeated there, some of them have gone beyond the [fol. 50] State Bar as a recommendation of the Legislature, and some have been introduced in the Legislature with or without State Bar approval, and these bills have gone directly to the question which this Committee is now asking. They have endeavored to establish one form or another of what in general terminology are called loyalty oaths and questions as to membership in the Communist Party. Each and every one of these bills have been defeated at some stage of the legislative procedure.

I think it is significant at the time of the proceedings before the United States Supreme Court, when I appeared on behalf of Mr. Konigsberg, and Mr. Belcher appeared on behalf of this Committee, that Chief Justice Warren, as an ex-Californian specifically asked Mr. Belcher, he said, "Well, Mr. Belcher, isn't it true, if I remember what happened when I was in California, that various bills have been introduced to endeavor to do just what the Committee of Bar Examiners is endeavoring to do in this 'case?'" and Mr. Belcher said, "Yes, of course," and Justice Warren said, "Well, weren't all those bills defeated in the Legislature?" so that it seems to me what we have here is a legislative history of efforts to do just what the Committee seeks to do here, the defeat of this as a matter of legislative history, and leaving a residue simply of the force and violence, 6064.1, and I submit that aside from the facts of the decisions we have in addition a legislative [fol. 51] history which I submit precludes the going into this question by legislative action.

Now, on this question of frustration, I am not unaware of the problem that is raised here. I was aware of it four years ago, and have been aware of it all through the proceedings to the United States Supreme Court, but I want to emphasize again what I touched on in my opening remarks that this question does not—the specific question that is asked—get the Committee anywhere. I mean if the answer to the question was yes, then your next question must of necessity be, "Well, at any meetings was force and violence discussed? Did anybody propose force and violence? To your knowledge was there force and violence considered in any of these meetings?" And I submit that this question, which is the key question, has been answered in every way that this witness can possibly answer it. He has said that he has never belonged to any organization that believed in force and violence, he has never heard any discussions of it, never been at meetings where force and violence was discussed. He has tried to answer this in every way he possibly can, and he has carried it the next step further and said if the state of the record would be such that there was an accusation that he believed in force and violence, that at such and such a meeting he did, or

somebody accused him of it, he would be prepared to answer directly to these accusations, but in effect if you are asking the question in the manner you are, which we submit penetrates into the protected area of the First Amendment you are in effect asking him to over a long period of time strip himself naked as to his personal beliefs and associations. You are asking him on the basis of general questions, without a basis for the questions, without a basis for assuming that the questions can lead to an ultimate decision unfavorable to him. By the same reasoning that you can ask is he a member of the Communist Party you could by the same reasoning perhaps go through every single organization that has ever been accused of being related to the Communist Party, without any basis for assuming that he has done any wrongful act in connection with these things. I submit when you do this, and in asking this question getting to the very heart of the reason, why there is a First Amendment protection against having to expose one's beliefs, associations, ideas, concepts, and so forth. The specific acts, if there are any, if there are any accusations against him he is prepared to answer 100 per cent and fully, but I submit that in this area you are prohibited by the First Amendment, and the persistence in asking or the determination upon his refusal to answer would be a violation of his rights under the Fourteenth Amendment.

Mr. Macomber: Mr. Mosk, you realize that if Mr. [fol: 53] Konigsberg had answered the question that he refused to answer, an entirely new area of investigation might be opened up, and this Committee might be able to ascertain from Mr. Konigsberg that perhaps he is now and for many years past has been an active member of the Communist Party, and from finding out who his associates were in that enterprise we might discover that he does advocate the overthrow of this government by force and violence. I am not saying that he would do that, but it is a possibility, and we don't have to take any witness' testimony as precluding us from trying to discover if he is telling the truth. That is the point.

Mr. Mosk: I am well aware of the position and the reasoning of the Committee. I simply feel that from a

legal point of view, and based upon the Konigsberg and Schwere decisions I believe that the question invades his rights and is not a proper question, and that his failure to answer it cannot become the basis of a decision unfavorable to him, but I am well aware of the problem.

Mr. Macomber: One of us must be wrong.

Mr. Mosk: Right.

Chairman Whitmore: Does any member of the Committee have further questions of Mr. Konigsberg?

Mr. McGovern: I want to state that I think that a membership in the Communist Party is certainly relevant on the question of forcible overthrow. Mr. Konigsberg has [fol. 54] stated his denial with respect to forcible overthrow and tells us we must stop there. I don't feel we have to. I think we have a right to explore that, and if there is a relevancy between membership in the party and forcible overthrow, that is a relevant question, and as pointed out that failure to answer our relevant questions may result in denial of certification.

The Witness: I don't think, Mr. McGovern, you are interpreting what I said correctly. I didn't say you can't go any further and ask me about the overthrow, and stop and not ask me anything further. I have changed my thinking from four years ago. Mr. Whitmore asked me. You can ask me did I believe in the overthrow of the government, or did I throw a bomb, or do any act. Do you have any evidence of illegal acts? Bring them out, but you haven't done that. And I disagree emphatically with the previous speaker that you have a right to inquire further. That is what the Supreme Court rulings and Constitution say. You cannot, and have no right, and it is my duty as a citizen to resist your doing this, what is to me an unconstitutional act. The thing always followed, and I remember distinctly in the Army orientation programs I had reference to in past hearings, when General Marshall and Eisenhower set up the program said, "It is our duty to educate soldiers to become good citizens." They made it very clear and in many writings you have as part of the [fol. 55] record that it isn't enough for an American to accept the various privileges that that citizenship grants to them. There are certain deep responsibilities that go with those privileges, and unfortunately most of us don't know

them, don't accept them, and are not taught them. I was, and I have tried to follow it. And one of the responsibilities of citizenship, among others, is such as going to war. I feel very strongly. Among the duties of a citizen to compensate for the great advantages he gets, it seems to me is to, of course, protect your country when in danger, whether war or other, to try to live as you might say a seven day practicing believer in democracy, not just on Sundays, and finally to defend the Constitution by refusing to join in any acts which in any sense weaken it or compromise it. I feel if you persist in asking questions which go into the areas which are protected by the Constitution, that is what you are doing. You are compromising constitutional principles. I cannot be a party to it no matter what the price.

Mr. Surr: Mr. Konigsberg, I of course am a new member of the Committee since the previous hearings, but I do feel notwithstanding my lack of intimate acquaintance with the previous proceedings except through the transcript it should be made plain, first, that so far as I am concerned, and I think so far as the rest of the members of the Committee are concerned, there is no intention by any [fol. 56] of these questions to ascertain merely your beliefs. So far as I understand these questions we are not going into the matter of beliefs at all.

I think, second, it should be pointed out that any question as to membership in the Communist Party presently or in the immediate past, if answered in the affirmative, would not necessarily conclude the matter so far as my thinking goes, and that I agree with Mr. Mosk that it is a preliminary question, but it does lead into the field of your activity, what group you belonged to, and what activities you conducted, and I think that you as an applicant for admission to the Bar do owe to your prospective fellow members of the Bar the duty of full disclosure as to your acts, and I think that it should be made plain that we are asking questions leading up to acts and advocacy, open advocacy, if you will, not to beliefs.

The Witness: Well, I have tried to answer I never advocated the overthrow of the government or belonged to an organization that advocated the overthrow of the gov-

ernment. I never attended meetings where this was done. I cannot agree that is all you are doing when you are asking these questions. What you are asking has already been answered. Any further evidence or information that you seek is invading my rights as to opinion or association, and as leaders of the Bar it seems to me you should be [fol. 57] among those strengthening these rights along with the trend of decisions to firm up constitutional conduct and get away from non-conformity that plighted the country in recent years.

Mr. Maxfield: Do you know if the Communist Party advocates the overthrow of the country by force?

By the Witness:

A. No more than what I read by the papers.

Mr. Maxfield: So that when you state that you have never belonged to any organization which advocates the overthrow of the government by force, that can't be taken as a statement that you never have been a member of the Communist Party?

A. No, it can only be taken to mean that I never belonged to an organization that advocated the overthrow of the government by force and violence.

Mr. Maxfield. You don't include the Communist Party in that statement?

A. I can't include or exclude.

Mr. Maxfield: I would like to know which you do.

A. Well, I would like to ask my counsel how he feels.

Mr. Mosk: I think it is probably asking in an indirect way the same question.

Mr. Maxfield: I think he has answered the question [fol. 58] he doesn't belong to the Communist Party, or has he?

The Witness: You see, Mr. Maxfield, it may seem odd to you at this crass age we are living in that people are willing to pay a price to uphold principles. I happen to be such a creature. I am not saying it is a commendation or virtue, but it is just the way I am constituted.

Mr. Maxfield: You stated you don't belong to any organization which advocates the overthrow of the government by force. You stated it here and in former hearings. Now, can we take that as a statement that you never belonged to the Communist Party?

By the Witness:

A. You can take it any way you choose. I can't answer you in any other way. I said at the start, didn't I, we must understand what terms we are using. Are you talking about an illegal organization, illegal acts, or are you talking about a perfectly legal political form of expression, which incidentally to my knowledge the Communist Party still is. I don't think it is outlawed by the Internal Security Act. Perhaps my interpretation is incorrect. I am not stating it as a fact. I think to this moment the Communist Party has not been outlawed. It is still a legal organization. I suppose if the party in California or any other State wanted to put people on the ballot they could if they got [fol. 59] enough signatures on the nominating petition. What I am trying to make clear, because I do want to help the Committee in its determination and to uphold the law, and to help it, and help other students apply for the Bar, and I realize incidentally you have the problem of a certain consistency that I suppose must exist among Bar Examiners throughout the country in various forty-eight States. That is why I tried to clarify the question and asked you and invited you if you had any evidence of illegal acts on my part to bring them forth and confront me with them. I say again—and this is the heart of the matter—you cannot ask anybody for any purpose about normal legal conscience and activity. It gets you nowhere and has no bearing on the question of good moral character.

Chairman Whitmore: Mr. Konigsberg, do you know as a matter of fact whether or not it has been an inward purpose of the Communist Party to advocate the forceful overthrow of the government at any time since 1951?

A. When you say do I know, you mean— Well, how do you mean do I know?

Chairman Whitmore: Do you know this to be a fact?

A. I will say from what I have read both as a student in school, as well as in the papers, and privately, I do not [fol. 60] believe that this is a part of the program. As a matter of fact, I think in my own opinion or was it the Schwabe opinion, the Supreme Court referred to various commendable practices that the Communist Party has at various times engaged in. I do not know that to be a fact.

Chairman Whitmore: Do you believe that it has been an aim or purpose of the Communist Party at any time since 1951 to advocate the forceful overthrow of the government?

A. I do not believe that, but I do not know that.

Chairman Whitmore: It is your belief that such has not been a function or an aim or purpose of the Communist Party at any time since 1951?

A. Well, judging by the various published materials available to everyone, which I do read, I would say no, not to my knowledge, unless I am misreading these documents.

Chairman Whitmore: Does any other member of the Committee have further questions?

Mr. O'Donnell: I would like to make this statement so that there will be no misunderstanding on the part of any court that may review this record in the future, that I feel that as a member of the Committee that the failure of Mr. Konigsberg to answer the question as to whether [fol. 61] or not he is now a member of the Communist Party is an obstruction of the function of this Committee, not a frustration if that word has been used. I think it would be an obstruction. There are phases of his moral character that we haven't been able to investigate simply because we have been stopped at this point, and I for one could not certify to the Supreme Court that he was a proper person to be admitted to practice law in this State until he answers the question about his Communist affiliation.

The Witness: What other phases of my moral character do you say have been obstructed in investigating by this?

Mr. O'Donnell: We haven't even touched the witnesses whose letters you have produced here because of your failure to answer this question. We have been unable to pursue that investigation any further because we feel at this point you prevent us from engaging in a legitimate inquiry.

The Witness: I frankly don't understand how. I think this explanation is owed me. How is this preventing you from pursuing any further line of inquiry?

Mr. O'Donnell: Because you simply make it impossible for us to engage in any investigation of your Communist activity. Mr. Macomber pointed out the area that might be investigated here. I think we have made ourselves plain.

[fol. 62] The Witness: I can't accept that at all. In the first place under the various decisions it would have no bearing on the matter if you investigated it.

Mr. O'Donnell: We interpret the decisions differently.

Chairman Whitmore: Are there any further questions by any member of the Committee? Mr. Mosk, anything further?

Mr. Mosk: I have only this, Mr. Chairman. While we submitted a rather substantial number of letters in the previous hearings, for this hearing we felt that it would be well for you to hear a live witness, and so we brought Mr. Tobin. Without making any extensive efforts to secure additional letters, we felt that perhaps some additional communications at least bringing up-to-date the attitude of the community towards Mr. Konigsberg would be worthwhile, and so I would submit at this time a group of letters, if I may, for the record just indicate the nature of them. A letter from Lorris Gosman of Associated Machine Craft Company. A letter from J. Marx Ayres, Consulting Mechanical Engineer of 700 North Fairfax Avenue. A letter from Ruben W. Borough, insurance business. A letter from Allan M. Carson, an attorney, at 354 South Spring Street. A letter from Elaine B. Fischel, an attorney, at 742 South Hill Street. A letter from Dr. Joseph Goorwitch, a doctor [fol. 63] practicing at 1052 West 6th Street. A letter from Robert Kennard, 5611 West Washington Boulevard, an architect. A letter from Harold Koppelman, a physician at 6333 Wilshire Boulevard. A letter from Seymour Myerson. It is not on any letterhead stationery. A letter from

Arlan W. Moore, a Certified Public Accountant, at 224 North Canon Drive. A letter from Richard H. Oshman, an attorney, at 8736 Sunset Boulevard. A letter from Jerome Borack, a Certified Public Accountant, 191 South La Cienega Boulevard. For the most part, and I think in almost each of these communications are dealing with persons who have known him in the immediate years since the last hearing. There may be some overlapping, but we endeavored to concentrate in that area. I have only one other matter, Mr. Chairman:

Chairman Whitmore: Any objection to the receipt of the letters enumerated by Mr. Mosk? If not, they shall be received by the Committee as a group as Applicant's exhibit next in order.

(The documents were then marked as Applicant's exhibit next in order.)

Mr. Mosk: I would have only one other comment, Mr. Chairman. We have become aware in the last months that the Committee was, and rightfully so, carrying on further investigation of Mr. Konigsberg. I think that the record should indicate that the Committee has made apparently [fol. 64] some independent investigation, the exact nature of which I have no way of knowing, but I think the record should indicate then that the Committee by reason of that investigation has not brought forward any further or any derogatory information.

Chairman Whitmore: Mr. Mosk, we are in the process of investigating. We may very well find it necessary to have another hearing, and we had no way of knowing when Mr. Konigsberg came in today what questions he would answer or what position he would take with respect to questions put to him by the Committee. You may be certain, however, prior to the time any information that is adverse to Mr. Konigsberg is considered by the Committee, Mr. Konigsberg and you as his counsel will be made aware of that adverse information.

Mr. Mosk: Thank you.

Chairman Whitmore: Is there anything further?

Mr. O'Donnell: Except to remind Mr. Mosk the burden is yours.

Mr. Mosk: It is not an arbitrary burden.

Chairman Whitmore: They will be received as the Applicant's next in order. The Committee will examine them, and notify you of the decision of the Committee, and if a further hearing is necessary, we shall notify you.

"END OF HEARING"

[fol. 65] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 66]

(Stamp—Filed 9/21/57, No. 7794, In re Raphael Konigsberg, Committee of Bar Examiners, The State Bar of California.

APPLICANT'S EXHIBIT "H"

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ANGELUS 3-0626

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September 17, 1957

Committee of Bar Examiners
of the State Bar of California.
Los Angeles, California.

Dear Sirs:

I have known Mr. Raphael Konigsberg for the past ten years. During this time he has shown himself to be an honest, sincere citizen a person of the highest moral character.

I feel that Mr. Konigsberg would be as great a credit to the legal profession as he has been to our community.

Sincerely yours,

/s/ LORRIS GOSMAN
Lorris Gosman

(Stamp—Filed November 19, 1957. William I. Sullivan, Clerk, By R. J. Bell, L. A. Deputy.)

[fol. 67]

J. MARX AYRES

CONSULTING MECHANICAL ENGINEER

HIDEO ENDO, ASSOCIATE

700 NORTH FAIRFAX AVENUE • LOS ANGELES 46, CALIFORNIA

OLIVE 3-3731

September 18, 1957

Committee of Bar Examiners of the
State Bar of California
Los Angeles, California

Gentlemen:

It has come to my attention that Mr. Raphael Königsberg is to appear before you regarding his admission to the State Bar of California. Since his legal rights to the Bar have been clearly defined in the courts of the land, you must no longer prevent this man from practicing his chosen profession.

I have known Mr. Königsberg for approximately five years, most recently as an Associate of Tobin Company, and I know him to be trustworthy and honest. I consider him an exceptionally good citizen and devoted to the welfare of his fellow man. I am sure that Mr. Königsberg will be a credit to the State Bar of California.

Very truly yours,

/s/ J. MARX AYRES

J. Marx Ayres

JMA/jm

[fol. 68]

RUBE BOROUGH • MADELEINE BOROUGH • JULIUS KOGAN

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5922 1/4 North Figueroa Street
Los Angeles 42, CaliforniaLos Angeles, Calif.,
September 18, 1957.Committee of Bar Examiners
of the State Bar of California,
Los Angeles, California.

Gentlemen:

If I could have had a son to my liking it would have been one in the image and substance of Raphael Konigsberg. I am utterly sincere in this statement. He is kindly, courageous, true and, withal, has a rare ability. What more has mortal the right to ask?

I have known "Rafe" for 20 years or more. We first met when I was associate secretary of the Los Angeles Municipal League and he, a social worker, had come forward on some community problem. From then on we were associated, rather closely at times, in civic and political matters and I had a good opportunity to judge both his integrity and wisdom. Believe me, Gentlemen, neither are to be doubted.

I cannot understand how the law could be benefited by a denial of Mr. Konigsberg's right to practice.

Respectfully yours,

/s/ REUBEN W. BOROUGH
Reuben W. Borough.

[Vol. 69]

ALLAN M. CARSON
ATTORNEY AT LAW
354 SOUTH SPRING STREET
LOS ANGELES 13

Mutual 1271

Committee of Bar Examiners
State Bar of California
Los Angeles, California

Gentlemen:

I am informed that Raphael Konigsberg will again appear before your committee as an applicant for admission to the Bar in proceedings said to be consistent with the decision of the United States Supreme Court on the subject. As a member of the California Bar in active practice I recommend the admission of Mr. Konigsberg unqualifiedly and unhesitatingly and regardless of what his political affiliations may have been in the past or what they may now be.

I have known him for a period of over eighteen years last past; and it is my considered opinion that his loyalty to the United States is without question, his integrity is above reproach and his sense of moral and social responsibility is so far above the average as to exceed that possessed by most practicing lawyers today. To one who has known him and observed him as long as I have, the fact of his qualification for admission to the practice of law, on the basis of character, integrity, loyalty and responsibility, becomes so plain as to render incompetent, irrelevant and immaterial any question as to political beliefs or associations past or present. Moreover, it is my humble opinion that refusal to admit a person as well qualified as he, can only reflect unfavorably upon our Bar.

I do not believe that the predilections of the individual members of your honorable committee should be allowed to enter into consideration of Mr. Konigsberg's qualifications; and I strongly recommend his admission on the basis of

his being eminently qualified in character for the practice of law.

Respectfully yours,

/s/ ALLAN M. CARSON
ALLAN M. CARSON

ame/c

cc: Edward Mosk, Esq.
6305 Yucca Street,
Hollywood, Calif.

[fol. 70]

A. W. MOORE & Co.
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TAX ACCOUNTING

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CRestview 1-0568

CABLE ADDRESS
"ARLANMO"

September 17, 1957

Committee of Bar Examiners of
the State Bar of California
Los Angeles, California

Gentlemen:

I have been asked to write a letter with regard to Raphael Konigsberg who, I understand, is being examined for admittance to the State Bar of California.

I have known and worked with Mr. Konigsberg for the last five years. In that time, I have come to know him personally very well and hold him in high esteem.

I believe he will be a distinct addition both morally and professionally to the State Bar of California.

Yours very truly,

/s/ ARLAN W. MOORE
Arlan W. Moore

AWM:fa

[fol. 71]

ROBERT KENNARD Webster 4-1214 ARCHITECT A.I.A.
5611 West Washington Blvd.
Los Angeles 16, California

Sept 18, 1957

Committee of Bar Examiners
State Bar of California

Gentlemen:

I feel it is a pleasure to add a vote of confidence to the character of Mr. Raphael Konigsberg.

I have known Mr. Konigsberg for several years and my association with him, particularly in his capacity with the Tobin Company, has revealed him as a man of high integrity.

I certainly trust that you will give him the consideration which I believe he justly deserves.

very truly yours,

/s/ ROBERT KENNARD
Robert Kennard

RK:ah

[fol. 72]

OLEANDER 5-8127

RICHARD H. OSHMAN
ATTORNEY AT LAW

8736 SUNSET BOULEVARD
LOS ANGELES 46, CALIFORNIA

September 18, 1957

Committee of Bar Examiners of
State Bar of California
c/o Edward Mosk
Attorney at Law
6505 Yucca Street, Suite 254
Los Angeles 28, California

Re: RAPHAEL KONIGSBERG

Gentlemen:

This letter is to advise you that I have known Raphael Konigsberg for seven years. I was a classmate of his at the University of Southern California Law School, where we spent three years together, attending classes. During this time we became very well acquainted and formed a friendship which has lasted until the present time. I have been a guest in his home of various occasions and have had the pleasure of meeting his wife and children, both in his home and outside of the home.

Mr. Konigsberg and I very often studied together and discussed the legal courses which we were taking, and since the law is so embracing, our conversations and discussions frequently wandered from the field of law. During the course of our talks and for the period of our law school career, I observed that Mr. Konigsberg was the most intellectually mature person in my class. His questions, his observations, his answers and reasoning seemed to illustrate the fact that the study of law required a broad understanding of society. He brought to the study of law his varied background of teaching and social work, and his

comments upon the various courses were the most perceptive and mature. Both in and out of class he sought to find the reason and purpose for the various rules of law and their effect upon society and the individual.

His attitude in school, as well as now, was one of respect for the American system of jurisprudence, and his approach to the law is a moral one. I feel that he is one of the rare persons who feels the responsibility of society, as an individual, and that this attitude is one which would make him an excellent attorney. For these reasons I can think of no other person whom I would rather meet as an opponent in a legal matter, or as an associate, and I feel that he will be an exceptional addition to the legal profession in California.

Sincerely,

/s/ RICHARD H. OSHMAN

RICHARD H. OSHMAN

RHO:il

[fol. 73]

ELAINE B. FISCHER

ATTORNEY AT LAW

742 SOUTH HILL STREET—SUITE 268

LOS ANGELES 14, CALIFORNIA

MICHIGAN 1374

September 17, 1957

Committee of Bar Examiners

State Bar of California

Los Angeles, California

Re: Rafael Koningsberg

Gentlemen:

From the years 1950 through 1953 I attended the University of Southern California Law School with Rafael Koningsberg. I would like to tell you what I know about Rafael during this period.

He was an enthusiastic student, with a great deal of interest in the law school classes. He participated in classroom discussions when called upon to do so and I can never remember him being unprepared. I know that he studied for his classes and attended them—he wasn't the type of student that "cut" classes or took an occasional day off. Rather, he was diligent and conscientious. He never griped about homework or examinations, but instead he would tackle the job and follow it through.

Aside from the academic aspects, I know that Mr. Koningsberg was well liked by his fellow students. Being somewhat older than the average student, I remember that he was both sympathetic and concerned about their problems, and always encouraged them about the future.

It was always my feeling that Mr. Koningsberg would be a fine attorney because of the qualities mentioned hereinabove and I would welcome him as a fellow member of the Bar.

Very truly yours,

ELAINE B. FISCHER

EBF:dt

[fol. 74]

JOSEPH GOORWITCH, M. D.

DISEASES OF THE LUNGS, BRONCHOGRAPHY, BRONCHOSCOPY

AND CHEST SURGERY

718 PROFESSIONAL BLDG.

1052 WEST SIXTH STREET

LOS ANGELES 17, CALIF.

MADISON 6-1039

September 17, 1957

Committee of Bar Examiners

State Bar of California

Los Angeles, California

Gentlemen:

I first met Mr. Raphael Konigsberg of Los Angeles about a dozen years ago when he worked as a social service worker

in a local hospital. There is no reason in my mind to doubt the high moral quality of his character. I believe Mr. Konigsberg will make a fine attorney devoted to the administration of justice for all.

Yours truly,
J. Goorwitch, M.D.

[fol. 75]

HAROLD KOPPELMAN, M. D.
6333 WILSHIRE BOULEVARD
LOS ANGELES 48, CALIF.
WEBSTER 3-9163

September 17, 1957

Committee of Bar Examiners
State Bar of California
Los Angeles, California

Gentlemen:

I have known Mr. Raphael Koenigsberg for the past eight or nine years as a social worker, business man, law student, and public spirited citizen.

I have the highest regard for his intelligence, integrity, and moral character and believe that he will make an exemplary member of the Bar.

I do not hesitate to commend him to you in the highest possible terms.

Most sincerely yours,
HAROLD KOPPELMAN, M.D.

[fol. 76]

RUBINS, ROSMAN & BORAK
 CERTIFIED PUBLIC ACCOUNTANTS
 291 SOUTH LA CIENEGA BOULEVARD
 BEVERLY HILLS, CALIFORNIA

HERMAN RUBINS, C.P.A.
 ELLIOT S. ROSMAN, C.P.A.
 JEROME H. BORAK, C.P.A.

OLEANDER 5-7500
 OLYMPIA 2-0750

September 17, 1957

Committee of Bar Examiners of
 the State Bar of California
 458 South Spring Street
 Los Angeles, California

Re: Mr. Raphael S. Konigsberg

Gentlemen:

During the last two years we have been the public accountants for The Tobin Companies where Mr. Konigsberg serves in the capacity of office manager.

During this period of time we have had occasion to work closely with Mr. Konigsberg and hence, acquired a basis for an appraisal of his character and capacity.

In our opinion Mr. Konigsberg is without question an individual of the highest moral character and unimpeachable integrity.

As individuals engaged in the practice of a professional in our state, we urgently recommend that Mr. Konigsberg be admitted to the California State Bar as we feel he will prove to be a valuable addition to the profession.

Very truly yours,

RUBINS, ROSMAN & BORAK
 Certified Public Accountants

By

RRB:hc

[fol: 77]

1427 Coronado Terrace
Los Angeles 26, California
September 18, 1957

Committee of Bar Examiners of
the State of California
Los Angeles, California

Gentlemen:

May I present the following recommendation in behalf of Mr. Raphael Konigsberg, a candidate for the Bar in this state.

I have known Mr. Konigsberg for the past ten years, not only as a member of the same community in which I reside, but have had intermittent business dealings with him as a representative of his organization, the Tobin Co., land developers and realtors, in my professional capacity as a consultant site planner and designer. In both of these areas of association I have found Mr. Konigsberg to be a constructive force representing the highest ideals and interests in behalf of the good and welfare of our community. His ethics and practices in business matters are above reproach.

Based upon the record of experience and association with Mr. Konigsberg, I would like to endorse him without reservations to become a member of the legal profession.

Sincerely yours,

Seymour A. Myerson

SAM/ve

[fol. 78] [File endorsement omitted]

L. A. No. 23266

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

—
RAPHAEL KONIGSBERG

v.

STATE BAR OF CALIFORNIA

—
ORDER GRANTING REVIEW IN STATE BAR PROCEEDING—

Gibson, C.J. did not participate herein.

Let a writ of review issue, to be heard at the Los Angeles, January, 1959, calendar. The record of the State Bar hearings shall constitute a return thereto.

[File endorsement omitted]

SHENK

Acting Chief Justice

[fol. 79]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

ORDER CONTINUING THE MATTER FOR ORAL ARGUMENT—

January 14, 1959

[Title omitted]

Matter called. Chief Justice Gibson stated that he would not participate in this matter. Edward Mosk appeared for petitioner. Frank B. Belcher appeared for respondents. Mr. Mosk stated that he desired the presence at oral argument of all justices who will participate in the disposition of this matter. Acting Chief Justice Carter stated that the matter is therefore continued to the Los Angeles, April 1959, calendar.

[fol. 80]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

[L. A. No. 23266. In Bank.]

Raphael Konigsberg, Petitioner, v. The State Bar
of California et al., Respondents.

- [1] Attorneys—Admission to Bar—Eligibility—Loyalty to Government.—An applicant's persistent refusal to answer questions put to him by the Committee of Bar Examiners concerning either past or present membership in or affiliation with the Communist Party after being warned that such conduct would require denial of his certification to admission to practice justified the committee in refusing to certify him where, in view of Bus. & Prof. Code, § 6064.1, enjoining the committee against certifying for admission to practice any person who "advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means," which clearly requires the committee to inquire as to such advocacy, and the fact that Congress (68 Stat. 775; 50 U.S.C. § 841) and the state Legislature (Gov. Code, § 1027.5) have declared that the Communist Party advocates such overthrow, the inquiry as to membership in that party was relevant and material in determining whether the proscribed advocacy existed.

Proceeding to review action of the Committee of Bar Examiners in refusing to certify petitioner for admission to practice law and application to the Supreme Court for admission to practice. Petition for review denied; application to Supreme Court denied.

Edward Mosk for Petitioner.

A. L. Wirin, Fred Okrand and High R. Manes as Amici Curiae on Behalf of Petitioner.

Frank B. Belcher, Robert D. Burch and Ralph E. Lewis for Respondents.

[1] See Cal. Jur. 2d, Attorneys at Law, § 38.

McK. Dig. Reference: [1] Attorneys, § 15.1.

[vol. 81]

OPINION—October 16, 1959

The Court.—Petitioner seeks review of the action of the Committee of Bar Examiners in refusing to certify him to this court for admission to practice law in California. Also, he has applied directly to this court for admission to practice.

The Committee of Bar Examiners is established by the Board of Governors of The State Bar of California pursuant to statutory authority. It conducts the bar examinations and certifies directly to this court those applicants for admission who fulfill the requirements of the code (Bus. & Prof. Code, § 6046). This court may admit to practice any applicant so certified (Bus. & Prof. Code, § 6064). An applicant who is refused certification may have the action of the committee reviewed by this court (Bus. & Prof. Code, § 6066).

The code specifically provides (§ 6064.1) that "[n]o person who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, shall be certified . . . for admission. . . ."

In October, 1953, petitioner took and passed the written bar examination. Shortly before that examination, and on several later occasions, hearings were conducted by a subcommittee and the full Committee of Bar Examiners.

An ex-Communist testified that petitioner had attended meetings of a Communist Party unit in 1941. Petitioner offered much evidence of his satisfactory service in the Army during World War II, and of his good character and loyalty. The evidence of these hearings is reviewed in some detail in the several opinions in *Konigsberg v. State Bar*, 353 U.S. 252, [77 S.Ct. 722, 1 L.Ed.2d 810]. Petitioner denied that he advocated overthrow of the government, but refused to answer any questions of committee members as to his membership in the Communist Party, asserting that such inquiries infringed rights guaranteed him by the First and Fourteenth Amendments to the Constitution of the United States.

The committee, by letter of May 17, 1954, advised petitioner that his application was denied on grounds that he had not sustained his burden of establishing that he (1)

possessed the good moral character required by section 6060, subdivision (c), of the code, or (2) did not advocate unlawful overthrow of the government, the showing required by section 6064.1.

Petitioner thereupon sought review by this court. His petition was denied April 20, 1955, without opinion, by a divided court. The United States Supreme Court granted certiorari. On May 6, 1957, that court, with three justices dissenting and one not participating, reversed and remanded [fol. 82] the matter to this court "for further proceedings not inconsistent with this opinion" (*Konigsberg v. State Bar*, *supra*, 353 U.S. 252).

In doing so, the United States Supreme Court held (p. 273) that "there is no evidence in the record which rationally justifies a finding that Konigsberg failed to establish his good moral character or failed to show that he did not advocate forceful overthrow of the Government."

That court specifically pointed out (p. 259) that Konigsberg "was not denied admission to the California Bar simply because he refused to answer questions," and noted that he had not been told that he would be barred "just because he refused to answer relevant inquiries or because he was obstructing the Committee." In this connection it was said (p. 261) that "Serious questions of elemental fairness would be raised if the Committee had excluded Konigsberg simply because he failed to answer questions without first explicitly warning him that he could be barred for this reason alone...."

The court stated (353 U.S. at pp. 261-262) that "If it were possible for us to say that the . . . [committee] had barred Konigsberg solely because of his refusal to respond to its inquiries into his political associations and his opinions about matters of public interest, then we would be compelled to decide far-reaching and complex questions relating to freedom of speech, press and assembly. There is no justification for our straining to reach these difficult problems when the . . . [committee] itself has not seen fit, at any time, to base its exclusion of Konigsberg on his failure to answer. If and when a State makes failure to answer a question an independent ground for exclusion from the Bar, then this Court, as the cases arise, will have

to determine whether the exclusion is constitutionally permissible. We do not mean to intimate any view on that problem here nor do we mean to approve or disapprove Konigsberg's refusal to answer the particular questions asked him."

Following the remand, this court vacated its prior order denying the petition for review and referred the entire matter, including the application for admission to the bar filed with us by petitioner after the decision of the United States Supreme Court, to the Committee of Bar Examiners for further proceedings. The committee conducted a hearing September 21, 1957.

At this hearing, the records of all previous hearings were incorporated by stipulation as part of the record, petitioner and a witness called by him were examined, and petitioner introduced letters recommending him as to character and loyalty. No evidence additional to that received [fol. 83] in the 1953-1954 hearings was offered as reflecting on petitioner's loyalty or to show his advocacy of overthrow of the government. Thus a finding that he was not of good moral character or that he advocated overthrow of the government would be inconsistent with the decision of the United States Supreme Court upon the previous record.

At the 1957 hearing, however, the committee did fully advise petitioner and his counsel that his refusal to answer material questions put to him by it would obstruct its investigation of his qualifications to practice law, with the result that the committee would not be able to certify him for admission. It was made clear to him that questions concerning membership in the Communist Party were deemed material. Nonetheless, petitioner refused to answer any and all questions put to him by the committee concerning either past or present membership in or affiliation with the Communist Party. The committee then found that Konigsberg had refused to answer its questions as to his membership in or affiliation with the Communist Party, that these questions were material to a proper determination of his qualifications, that his refusal to answer had obstructed the investigation which the statute requires, and that because of this refusal the committee is unable to certify him for admission.

It is this action which petitioner seeks to have reviewed. It differs materially from that of 1954. The committee action now before us contains no findings or conclusion that petitioner had failed to establish either his good moral character or his absention from advocacy of overthrow of the government.

[1]. Here it is the refusal to answer material questions which is the basis for denial of certification. Petitioner's refusal to answer is conceded. The issue is whether the questions are material. We think their materiality is clear. The committee is enjoined against certifying for admission to practice any person who "advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means." (Bus. & Prof. Code, § 6064.1.) This provision clearly requires the committee to inquire as to such advocacy. The Congress (68 Stat. 775; 50 U.S.C. § 841) and the California Legislature (Gov. Code, § 1027.5) have declared that the Communist Party does advocate such overthrow. It follows that inquiry as to membership in that party is relevant and material in determining whether the proscribed advocacy exists. Petitioner refused to answer questions as to such membership at periods after the statutory proscription and after the [fol. 84] legislative declarations of the purpose of the Communist Party. As we have noted, he persisted in his refusal after being warned that such conduct would be deemed to require denial of his certification by the committee.

We are unable to distinguish this situation from that presented in *Beilan v. Board of Public Education*, 357 U.S. 399 [78 S.Ct. 4317, 1324, 2 L.Ed.2d 1414, 1433]. There a school teacher refused to answer questions as to his loyalty. This refusal was made the basis for a finding of "incompetency." There, as here, there was no finding that the individual was in fact disloyal, but merely a finding that his refusal to answer questions pertinent to his loyalty revealed a lack of candor which constituted unfitness. Our case is somewhat stronger in that here a statute specifically requires the committee to certify that petitioner does not advocate overthrow of the government, and the question as to party membership bears upon that issue. In *Beilan*, as here, there was no rule specifically providing that the

failure to answer would be deemed ground for adverse action, but here, as there, the investigating authority gave clear warning that such a result would follow.

In its previous decision in this case, the United States Supreme Court held only that the evidence was insufficient to sustain a finding that petitioner is not of good moral character. The present record contains no additional evidence on that subject. However, the refusal to certify for admission is, on the present record, based wholly upon his refusal to answer pertinent questions. This ground was specifically left open in the earlier decision of that court and subsequent decisions have recognized this fact. (*Beilan v. Board of Public Education*, *supra*, p. 409; *Lerner v. Casey*, 357 U.S. 468, 478 [78 S.Ct. 1311, 1324, 2 L.Ed.2d 1423, 1433].)

Determination whether petitioner was a member of the party which has been legislatively determined to advocate overthrow of the government was blocked by his refusal to answer. Such refusal likewise effectively prevented the committee from reaching the question whether, if he were such a member, his membership was knowing or innocent. The committee's refusal to recommend him for admission was based upon his refusal to answer inquiries about his relevant activities—not upon those activities themselves. Thus its refusal is fully justified under the rule of *Beilan*, which disposes of his claim that his constitutional rights have been infringed.

Petitioner does not question the constitutionality of the code section which prohibits certification of one who advocates unlawful overthrow of the government, nor of the federal and state legislative declarations that the Communist Party seeks such overthrow. Implicit in the statutory provision for review of the committee's refusal to certify an applicant is the power of this court to admit one not so certified. But to admit applicants who refuse to answer the committee's questions upon these subjects would nullify the concededly valid legislative direction to the committee. Such a rule would effectively stifle committee inquiry upon issues legislatively declared to be relevant to that issue. We cannot in good conscience deny the committee the right to inquire into a matter as to which

it must certify. Whether the members of this court consider such a statute effective, practical or wise is irrelevant. We do not act in a legislative capacity. Rather, we recognize and enforce legislation which is valid.

We adopt and approve the findings of the committee stated in the 1957 report. The petition for review and the application for admission to the bar are denied.

Gibson, C. J.; deeming himself disqualified, did not participate.

Draper, J., sat pro tempore in place of the Chief Justice.

White, J., not having been a member of the court at the time of oral argument, did not participate.

TRAYNOR, Acting P. J. -I dissent.

The United States Supreme Court has determined that Konigsberg was denied due process of law and equal protection of the laws on the ground that "the evidence does not rationally support the only two grounds upon which the Committee relied in rejecting his application for admission to the California Bar." (*Konigsberg v. State Bar*, 353 U.S. 252, 262, [77 S.Ct. 722, 1 L.Ed.2d 810].) In its words, "there is no evidence in the record which rationally justifies a finding that Konigsberg failed to establish his good moral character or failed to show that he did not advocate forceful overthrow of the Government. Without some authentic reliable evidence of unlawful or immoral actions reflecting adversely upon him, it is difficult to comprehend why the State Bar Committee rejected a man of Konigsberg's background and character as morally unfit to practice law." (353 U.S. at 273.)

It declined to determine whether Konigsberg could be [fol. 86] excluded from practice solely because of his refusal to answer questions, stating:

"There is nothing in the California statutes, the California decisions, or even in the Rules of the Bar Committee, which has been called to our attention, that suggests that failure to answer a Bar Examiner's inquiry is, *ipso facto*, a basis for excluding an applicant from the Bar, irrespective of how overwhelming is his showing of good character or loyalty or how flimsy are the suspicions of the Bar

Examiners. Serious questions of elemental fairness would be raised if the Committee had excluded Konigsberg simply because he failed to answer questions without first explicitly warning him that he could be barred for this reason alone, even though his moral character and loyalty were unimpeachable, and then giving him a chance to comply. In our opinion, there is nothing in the record which indicates that the Committee, in a matter of such grave importance to Konigsberg, applied a brand new exclusionary rule to his application—all without telling him that it was doing so.

"If it were possible for us to say that the Board had barred Konigsberg solely because of his refusal to respond to its inquiries into his political associations and his opinions about matters of public interest, then we would be compelled to decide far-reaching and complex questions relating to freedom of speech, press and assembly. There is no justification for our straining to reach these difficult problems when the Board itself has not seen fit, at any time, to base its exclusion of Konigsberg on his failure to answer. If and when a State makes failure to answer a question an independent ground for exclusion from the Bar, then this Court, as the cases arise, will have to determine whether the exclusion is constitutionally permissible. We do not mean to intimate any view on that problem here nor do we mean to approve or disapprove Konigsberg's refusal to answer the particular questions asked him." (353 U.S. at 260, 262, footnotes omitted.)

The United States Supreme Court reversed the judgment of this court and remanded the case "for further proceedings not inconsistent with this opinion." (353 U.S. at 274.) In view of the questions expressly left undecided and the court's remand, it is my opinion that this court is not foreclosed by the United States Supreme Court's decision, in this case from adopting and applying to Konigsberg a rule making failure to answer relevant questions with respect to his qualifications an independent ground for exclusion.

[fol. 87] - An applicant ordinarily has the burden of establishing his qualifications to practice law, and if he refuses to answer questions relevant to his qualifications, it is my opinion that this court is justified in denying him admission.

Given the congressional and state legislative findings with regard to the Communist Party and the adjudications of guilt of its leaders of criminal advocacy, a question as to present or past membership in that party is relevant to the issue of possible criminal advocacy and hence to the applicant's qualifications.

Whatever its relevancy in a particular context, however, it is an extraordinary variant of the usual inquiry into crime, for the attendant burden of proof upon any one under question poses the immediate threat of prior restraint upon the free speech of all applicants. The possibility of inquiry into their speech, the heavy burden upon them to establish its innocence, and the evil repercussions of inquiry despite innocence, would constrain them to speak their minds so non-committally that no one could ever mistake their innocuous words for advocacy. This grave danger to freedom of speech could be averted without loss to legitimate investigation by shifting the burden to the examiners. Confronted with a prima-facie case, an applicant would then be obliged to rebut it.

Such a procedure is logically dictated by *Speiser v. Randall*, 357 U.S. 513 [78 S.Ct. 1332, 1352, 2 L.Ed.2d 1460]. The court there assumed that the state could deny a tax exemption to one whose advocacy of the unlawful overthrow of the government was such that it could be punished as a crime. Mindful of the risks to free speech, however, it took care to hold that the state could not compel the taxpayer to prove his right to an exemption and that therefore an oath as to his innocence of unlawful advocacy could not be required. There may be differences of degree in the public interest in the fitness of the applicants for tax exemption and for admission to the Bar. Even though the state may have more at stake in the latter situation, it is not therefore freer to endanger free speech needlessly.

Inquiry on the issue of advocacy of the unlawful overthrow of the government is a greedy camel; it does not easily take its leave. It has a way of moving on into the domain of lawful economic and political belief, speech, and activity. It bears noting that such advocacy, whether it carries criminal or civil sanctions, is unlike crimes whose elements readily set them apart from legitimate activity. (Cf.

Debnis v. United States, 341 U.S. 494 [71 S.Ct. 857, 95 L.Ed. [fol. 88] 1137], with *Yates v. United States*, 354 U.S. 298 [77 S.Ct. 1064, 1 L.Ed.2d 1356].) It also bears noting that such advocacy is not invariably associated with even active membership in the Communist Party. (*Yates v. United States*, *supra*.)

Such considerations as these may have led to the result in *Speiser v. Randall*, *supra*, 357 U.S. 513. In contrast an applicant for public employment can be required to state whether or not he is or was a member of the Communist Party, as a condition of his employment. (*Lerner v. Casey*, 357 U.S. 468 [78 S.Ct. 1311, 2 L.Ed.2d 1423]; *Beilan v. Board of Public Education*, 357 U.S. 399 [78 S.Ct. 1317, 1324, 2 L.Ed.2d 1414, 1433]; *Steinmetz v. California State Board of Education*, 44 Cal.2d 816, 823 [285 P.2d 617]; *Pockman v. Leonard*, 39 Cal.2d 676, 685-687 [249 P.2d 267].) Since an attorney is neither a public employee nor a taxpayer seeking an exemption, we do not know how the United States Supreme Court would resolve the constitutional issue here. Still, it has emphasized the importance of an independent Bar, and it has declared that petitioner's insistence on a constitutional right not to answer the questions here involved was not frivolous. (*Konigsberg v. State Bar*, 353 U.S. 252, 270, 273 [77 S.Ct. 722, 1 L.Ed.2d 810].)

We need not resolve the constitutional question, for the Legislature has not directed that section 6064.1 of the Business and Professions Code* be enforced by compelling applicants to answer all questions relevant to the proscribed advocacy, and significantly, it has not required declarations of nonadvocacy from members of the Bar. It rests solely with this court, in its supervision of admissions to the Bar, to determine whether petitioner must answer the questions in issue. The question is not whether the Legislature might constitutionally impose such requirements but whether this court should impose them. There is no good reason for the court to do so, particularly when the Legislature has made no attempt to impose them on practicing attorneys.

* "No person who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law."

The United States Supreme Court has determined that *Konigsberg* established his good moral character and that he did not advocate unlawful overthrow of the government. In the subsequent hearing there was no additional evidence adverse to *Konigsberg*. The committee did no more than make clear to him that his failure to answer would be an [fol. 89] independent ground for not certifying him to this court. *Konigsberg* chose to stand on his constitutional objections, and as the United States Supreme Court pointed out, there is "nothing in the record which indicates that his position was not taken in good faith." (353 U.S. at 270.) If the committee had evidence that would support a finding of unlawful advocacy, it could compel *Konigsberg* to disclose political statements and associations in rebuttal or forego admission to the Bar. As the United States Supreme Court held, the committee made no *prima facie* case against *Konigsberg*, and we are bound by that finding. I would therefore grant the petition of *Konigsberg* and admit him to the Bar of this state.

PETERS, J.—I dissent.

The majority opinion disregards the law of this case as already established by the United States Supreme Court. (*Konigsberg v. State Bar*, 353 U.S. 252 [77 S.Ct. 722, 1 L.Ed. 2d 810].) It misconstrues the high court's opinion, and in particular misconstrues the legal effect of the order of that court remanding the case "for further proceedings not inconsistent with this opinion." (*Konigsberg v. State Bar*, 353 U.S. at p. 274.) The result is that, in my opinion, applicant has been denied due process and equal protection.

The only issues before The State Bar in its first proceeding were whether the applicant was of good moral character and whether he advocated the forceful overthrow of the government of the United States. The burden was upon applicant to establish those facts: Lengthy hearings were held. At these hearings applicant furnished overwhelming evidence of his good moral character and of the fact that he did not advocate and had never advocated the forceful overthrow of the government. He refused to answer any question as to his political affiliations. The State Bar refused to certify

the applicant for admission on the ground that he had failed to sustain his burden on the two issues involved. The applicant sought review by this court. The petition was denied without opinion. The United States Supreme Court granted certiorari. That court then reversed this court and The State Bar and held that the applicant had sustained his burden of proof on the two key issues, and that on the showing made the applicant should have been certified for admission. The case was remanded "for further proceedings not inconsistent with this opinion." (*Königsberg v. State Bar*, 353 U.S. at p. 274.)

[fol. 90] Following this remand this court, by a divided vote, instead of certifying the applicant, vacated its prior order and referred the case back to The State Bar for further proceedings. No showing was then or later made that any new evidence or facts had been discovered. The State Bar then held a so-called hearing. It was stipulated that the entire prior record should be introduced. The State Bar had admittedly hired an investigator to check on the applicant while the case had been pending in the courts, but it did not produce him or offer any evidence at all. The petitioner produced additional evidence in further support of his contentions that he was of good moral character and a loyal citizen. No question was asked him that had not been asked on the prior hearing, and no answer was given that had not already been given. The only difference between the two hearings was that at the last one petitioner was warned that his failure to answer questions as to his political affiliations could be construed as lack of cooperation that would justify a denial of his application.

Thus petitioner, in the first hearing, presented overwhelming evidence that he was of good moral character and a loyal citizen. The highest court in the land so held. Then, on precisely that same record, the record that the high court had held demonstrated that the applicant had sustained his burden as a matter of law, the majority of this court have held that The State Bar properly denied certification because this time applicant was warned that the failure to answer certain questions would be construed as lack of cooperation. How many times does the issue of whether applicant possesses a good moral character and is a loyal citi-

zen have to be tried? Those were the issues presented. Having sustained his burden as to those issues, on what rational theory can it be held that The State Bar, at this late date, with no new evidence, can offer a new and different excuse for denying certification? When does this litigation come to an end? I had always thought, until I read the majority opinion in this case, that our system of law was predicated on the fundamental theory that, when issues between litigants have once been determined, they cannot be relitigated. I had always thought that litigants were required to raise all relevant issues in one proceeding. I had assumed that parties cannot litigate their case piecemeal.

The majority purport to find sanction for this violation of fundamental principles in the order of the United States Supreme Court, heretofore quoted, remanding the case "for [fol. 91] further proceedings not inconsistent with this opinion" (*Konigsberg v. State Bar*, 353 U.S. at p. 274), and in several sentences contained in the opinion. The majority do not quote all the relevant language. At page 259 of the high court opinion appears the following:

"In *Konigsberg's* petition for review to the State Supreme Court there is no suggestion that the Committee had excluded him merely for failing to respond to its inquiries. Nor did the Committee in its answer indicate that this was the basis for its action. After responding to *Konigsberg's* allegations, the Bar Committee set forth a defense of its action which in substance repeated the reasons it had given *Konigsberg* in the formal notice of denial for rejecting his application.

"There is nothing in the California statutes, the California decisions, or even in the Rules of the Bar Committee, which has been called to our attention, [and there is still nothing in such statutes, decisions or rules] that suggests that failure to answer a Bar Examiner's inquiry is *ipso facto*, a basis for excluding an applicant from the Bar, irrespective of how overwhelming is his showing of good character or loyalty or how flimsy are the suspicions of the Bar Examiners. Serious questions of elemental fairness would be raised if the Committee had excluded *Konigsberg*

simply because he failed to answer questions without first explicitly warning him that he could be barred for this reason alone, even though his moral character and loyalty were unimpeachable, and then giving him a chance to comply. In our opinion, there is nothing in the record which indicates that the Committee, in a matter of such grave importance to Konigsberg, applied a brand new exclusionary rule to his application—all without telling him that it was doing so.

"If it were possible for us to say that the Board had barred Konigsberg solely because of his refusal to respond to its inquiries into his political associations and his opinions about matters of public interest, then we would be compelled to decide far-reaching and complex questions relating to freedom of speech, press and assembly. There is no justification for our straining to reach these difficult problems when the Board itself has not seen fit, at any time, to base its exclusion of Konigsberg on his failure to answer. If and when a State makes failure to answer a question an independent ground for exclusion from the Bar, then this Court, as the cases arise, will have to determine whether the exclusion is constitutionally permissible. We do not mean to intimate any view on that problem here nor do we mean to approve or disapprove Konigsberg's refusal to answer the particular questions asked him."

The majority opinion interprets the remanding order and the above-quoted portion of the opinion as a direction, or at least an authorization, to return the proceeding to The State Bar to permit it to refuse certification solely on the ground that Konigsberg had refused to cooperate by refusing to answer questions about his political affiliations. This is not a correct interpretation of the remanding order. Obviously, what the Supreme Court meant by the quotation, *supra*, is that California has never adopted a statute or a rule making failure to answer *ipso facto*, a ground for refusal to certify, and that The State Bar could not properly contend that on the record there involved such was a valid ground for refusal to certify. Without such a statute or rule the point could not be urged. Certainly the Supreme Court could not have meant that without a statute or rule the Board of Bar

Examiners could create a "rule" simply by warning Konigsberg that the effect of refusal to answer would be to cause the board to refuse his certification. Such a warning, coming four years after Konigsberg first appeared before the committee, does not comply with rules of "elemental fairness" as required by the Supreme Court of the United States.

Rules for admission to practice law are not to be adopted in this cavalier fashion. The only rules passed by the Legislature provide that the applicant must be of good moral character, and must not advocate the forceful overthrow. There is no rule about failing to answer. If California is to adopt a new rule relating to failure to answer questions, such rule or statute should be adopted in the manner rules and statutes are normally adopted. Here the so-called "rule" was adopted in the middle of a proceeding as an afterthought simply to justify the actions of the Bar Committee in refusing to certify Konigsberg for admission. To sanction such a procedure is not only unfair but, in my opinion, a denial of due process and equal protection.

After the careful review of the evidence made by the United States Supreme Court, and after holding that such evidence did not justify the refusal to certify, when the high court remanded the case "for further proceedings not inconsistent with this opinion" it meant, and must have meant, that this court was to grant the petition of Konigsberg, unless new facts relating to character or loyalty were produced. Any other action was necessarily inconsistent with the opinion of the Supreme Court of the United States.

[fo]. 93] Of course, had The State Bar made a showing that after the first hearings and while the case was on appeal it had discovered new evidence that Konigsberg was not of good moral character and not a loyal citizen, the case could have been remanded to The State Bar to hear and consider that evidence. But no such shewing was made and no such evidence produced.

Thus the majority opinion, in my view, violates the remand order of the United States Supreme Court.

In addition, the majority opinion also violates the law of the case as established by the high court. As already pointed out, all of the questions Konigsberg refused to answer were addressed to the inquiry as to whether he was or had been a

member of the Communist Party. The only legitimate purpose behind those questions was to ascertain whether Konigsberg advocated or had ever advocated the forceful overthrow of the government of the United States. Konigsberg answered, and answered frankly, every question directed to that subject. The State Bar produced no evidence to the contrary. In discussing the answers given by Konigsberg, the United States Supreme Court (*Konigsberg v. State Bar*, 353 U.S. 252, at p. 271) had this to say: "Konigsberg repeatedly testified under oath before the Committee [and he gave similar answers at the last hearing] that he did not believe in nor advocate the overthrow of any government in this country by any unconstitutional means. For example, in response to one question as to whether he advocated overthrowing the Government, he emphatically declared: 'I answer specifically I do not, I never did or never will.' No witness testified to the contrary. As a matter of fact, many of the witnesses gave testimony which was utterly inconsistent with the premise that he was disloyal. And Konigsberg told the Committee that he was ready at any time to take an oath to uphold the Constitution of the United States and the Constitution of California."

There is no evidence that Konigsberg now or at any other time has ever advocated the forceful overthrow, or ever belonged to any association that he knew so advocated. The evidence is all to the contrary. The United States Supreme Court after reviewing the evidence then before it, and no other evidence has been produced on the issue, had this to say (*Konigsberg v. State Bar*, 353 U.S. 252, at p. 273): "We recognize the importance of leaving States free to select [fol. 94] their own bars, but it is equally important that the State not exercise this power in an arbitrary or discriminatory manner nor in such way as to impinge on the freedom of political expression or association. A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important both to society and the bar itself that lawyers be unintimidated—free to think, speak, and

¹ This is the oath required by California law—Business and Professions Code, section 6067.

act as members of an Independent Bar. In this case we are compelled to conclude that there is *no evidence in the record which rationally justifies a finding that Konigsberg failed to establish his good moral character or failed to show that he did not advocate forceful overthrow of the Government.* [Italics added.] Without some authentic reliable evidence of unlawful or immoral actions reflecting adversely upon him, it is difficult to comprehend why the State Bar Committee rejected a man of Konigsberg's background and character as morally unfit to practice law. As we said before, the mere fact of Konigsberg's past membership in the Communist Party, if true, without anything more, is not an adequate basis for concluding that he is disloyal or a person of bad character. A lifetime of good citizenship is worth very little if it is so frail that it cannot withstand the suspicions which apparently were the basis for the Committee's action."

It must be remembered that at the various hearings Konigsberg produced evidence of 54 persons who testified in detail about almost every phase of his adult life. Not one word or one bit of evidence was produced to show that Konigsberg had ever committed a wrongful, improper or disloyal act. The evidence was all to the contrary. Applicant himself testified that he did not and never had advocated the forceful overthrow. The United States Supreme Court was much impressed by this testimony. An examination of that court's opinion will demonstrate to a certainty that it held that, on the record before it, and the present record is stronger in this respect, Konigsberg had affirmatively demonstrated that he possessed a good moral character and was a loyal citizen. This is the law of this case.

The high court stated that the issue before it was "Does the evidence in the record support any reasonable doubts about Konigsberg's good character or his loyalty to the Governments of the State and Nation? . . .

"Konigsberg claims that he established his good moral character by overwhelming evidence and carried the burden of proving that he does not advocate overthrow of the Gov- [fol. 95] ernment. He contends here, as he did in the California court, that there is no evidence in the record which rationally supports a finding of doubt about his character

or loyalty. . . . If this is true, California's refusal to admit him is a denial of due process and of equal protection of the laws because both arbitrary and discriminatory. After examination of the record, we are compelled to agree with Konigsberg that the evidence does not rationally support the only two grounds upon which the Committee relied in rejecting his application. . . ." (353 U.S. at p. 262.).

Then, after referring to the evidence produced by Konigsberg on the issue of his character, the court stated (353 U.S. at p. 265): "Other witnesses testified to Konigsberg's belief in democracy and devotion to democratic ideas, his principled convictions, his honesty and integrity, his conscientiousness and competence in his work, his concern and affection for his wife and children and his loyalty to the country. These, of course, have traditionally been the kind of qualities that make up good moral character. The significance of the statements made by these witnesses about Konigsberg is enhanced by the fact that they had known him as an adult while he was employed in responsible professional positions. Even more significant, not a single person has testified that Konigsberg's moral character was bad or questionable in any way."

After referring to evidence of Konigsberg's background the court refers to this evidence of character as "Konigsberg's forceful showing of good moral character" and comments on the fact that "there is no evidence that he has ever been convicted of any crime or has ever done anything base or depraved" the high court refers to certain arguments of The State Bar and concludes "When these items are analyzed, we believe it cannot rationally be said that they support substantial doubts about Konigsberg's moral fitness to practice law." (353 U.S. at p. 266.) This is the law of this case.

Then, after analyzing all the evidence on this issue relied upon by The State Bar, the court stated: "On the record before us, it is our judgment that the inferences of bad moral character which the Committee attempted to draw from Konigsberg's refusal to answer questions about his political affiliations and opinions are unwarranted." (353 U.S. at p. 270.)

After discussing at length the evidence that The State Bar relied upon to show possible advocacy of forceful overthrow, the United States Supreme Court concluded with the statement already quoted but which bears repetition: "In this [fol. 96] case we are compelled to conclude that there is no evidence in the record which rationally justifies a finding that Konigsberg failed to establish his good moral character or failed to show that he did not advocate forceful overthrow of the Government. . . . It is difficult to comprehend why the State Bar Committee rejected a man of Konigsberg's background and character as morally unfit to practice law. . . . A lifetime of good citizenship is worth very little if it is so frail that it cannot withstand the suspicions which apparently were the basis for the Committee's action." (353 U.S. at p. 273.) This, too, is the law of this case.

Thus it is the law of this case that the record before the Supreme Court of the United States established, as a matter of law, that applicant, without conflict, proved that he possessed a good moral character and was a loyal citizen. The present record is even stronger in this respect. If it be taken as established as a matter of law that applicant possesses such a character and is loyal, the two statutory requirements involved, of what relevancy is it that he refused to answer questions as to his political affiliations? The holding that mere refusal to answer the questions justified refusing certification, under the circumstances here, necessarily violates the law of the case as established by the high court.

Stated another way, if the record before the high court established these facts as a matter of law, the record now before this court also, necessarily, shows these facts as a matter of law. Therefore, it is a necessary conclusion from the majority opinion that although Konigsberg affirmatively sustained the burden of showing by very substantial and uncontradicted evidence that he possesses a good moral character and is a loyal citizen, and although the record will support no other conclusion, he may be denied admission solely because he refused to cooperate by answering questions about his political affiliations. Thus, although the petitioner has affirmatively sustained his burden of proof, and there is no evidence or inference from the evidence to the contrary,

the majority hold that he may be denied relief solely because he refused to answer questions as to his political affiliations.

For these reasons, and also for the reasons stated in the dissenting opinion of Mr. Justice Traynor, I would grant the petition of Königsberg and admit him to the bar of this state.

[fol. 97.]

Order Due
November 13, 1959

L.A. No. 22266

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

KONIGSBERG

—v.—

THE STATE BAR OF CALIFORNIA

Gibson, C.J., deeming himself disqualified did not participate.

Draper, J., sat pro tempore in place of the Chief Justice.

ORDER DENYING REHEARING

Petition for rehearing Denied.

Traynor, Acting C.J. and Peters, J. are of the opinion that the petition should be granted.

Traynor, Acting Chief Justice.

Filed

Nov 10, 1959

William E. Sullivan, Clerk

By: R. J. Bell

S. F. Deputy

[fol. 97a] Clerk's Certificate to foregoing transcript
(omitted in printing).

[fol. 98]

SUPREME COURT OF THE UNITED STATES

No. 661, October Term, 1959

 RAPHAEL KONIGSBERG, Petitioner,

—v.—

STATE BAR OF CALIFORNIA, et al.

 ORDER GRANTING MOTION TO USE RECORD IN No. 5,
 OCTOBER TERM, 1956—March 7, 1960

On Consideration of the motion to use record in No. 5,
 October Term, 1956, in this case,

It Is Ordered by this Court that the said motion be, and
 the same is hereby, granted.

[fol. 99]

SUPREME COURT OF THE UNITED STATES

No. 661, October Term, 1959

[Title omitted]

ORDER ALLOWING CERTIORARI—March 7, 1960

The petition herein for a writ of certiorari to the Su-
 preme Court of the State of California is granted.

And it is further ordered that the duly certified copy of
 the transcript of the proceedings below which accompanied
 the petition shall be treated as though filed in response to
 such writ.

[fol. 73]

[File endorsement omitted]

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

L. A. No. 23266

RAPHAEL KONIGSBERG, Petitioner,

vs.

STATE BAR OF CALIFORNIA and the Committee of Bar
Examiners of the State Bar of California, Respondents.

REPORT OF THE COMMITTEE OF BAR EXAMINERS—
Filed November 19, 1957

To the Honorable Phil S. Gibson, Chief Justice, and to the
Honorable Associate Justices of the Supreme Court of
the State of California:

I.

On July 10, 1957, the following order was made in the
above entitled matter:

"Pursuant to mandate of the Supreme Court of the
United States, it is ordered that the decision of this
Court, filed April 20, 1955, be vacated, and the matter
of admitting Raphael Konigsberg to the practice of
law in all the courts of this State is referred to the
Committee of Bar Examiners for further proceedings.

"CARTER, J. is of the opinion that the application of
Raphael Konigsberg for admission to practice law in
all of the courts of this State should now be granted.

(s) GIBSON, Chief Justice."

II.

Pursuant to this order, the following action was taken by
the Committee of Bar Examiners in the matter of the appli-
[fol. 74] cation of Raphael Konigsberg for admission to
practice law in the State of California:

(1) The Committee carefully considered the opinion of the Supreme Court of the United States in the matter entitled "Raphael Konigsberg, Petitioner, vs. State Bar of California and Committee of Bar Examiners of the State Bar of California", decided May 6, 1957, 353 US —, 1 L ed 2d 810, 77 S Ct —.

(2) On September 21, 1957, at a meeting of the Committee in Los Angeles, at which all of the members of the Committee were present, the applicant appeared with his attorney, Edward Mosk, Esq. At this meeting the applicant's petition for admission was further heard by the Committee. An argument by the attorney for the applicant in support of the application for admission was also heard. The applicant was sworn and testified at the hearing. A witness produced by the applicant was sworn and testified. Written evidence was offered by the applicant, and was received by the Committee. The written record of all previous hearings by the Committee and one of its subcommittees on the application of Raphael Konigsberg for admission was incorporated as part of the record of the further hearing, by the stipulation of the applicant and by the Committee.

(3) The application was then submitted by the applicant and by his attorney.

III.

At the hearing on September 21, 1957, the Committee advised the applicant and his attorney that the refusal of [fol. 75] applicant to answer material questions put to him by the Committee would obstruct the investigation by the Committee of applicant's qualifications for admission to practice law, with the result that the Committee would not be able to certify him for admission.

IV.

At the hearing on September 21, 1957, applicant refused to answer any questions put to him by the Committee concerning his past or present membership in or affiliation with the Communist Party.

V:

After further consideration of the entire record before it, the Committee finds and concludes:

(1) That the questions put to the applicant by the Committee concerning past or present membership in or affiliation with the Communist Party are material to a proper and complete investigation of his qualifications for admission to practice law in the State of California.

(2) That the refusal of applicant to answer said questions has obstructed a proper and complete investigation of applicant's qualifications for admission to practice law in the State of California.

(3) That the refusal of applicant to answer said questions has obstructed a necessary and proper function of the Committee under Section 6046 and related sections of the Business & Professions Code of the State of California and under the Rules Regulating Admission to Practice Law in California adopted pursuant to Section 6047 and related sections of said Code.

[fol. 76] (4) That in view of the foregoing, the Committee is unable to certify that applicant possesses the requisite qualifications or has fulfilled the requirements for admission to practice law in the State of California.

In Witness Whereof, the Committee of Bar Examiners of the State Bar of California respectfully submits this report of its proceedings on the reference made to it by the Supreme Court of the State of California on July 10, 1957, together with the transcript of the hearing before the Committee on September 21, 1957, and the exhibits submitted by the applicant at that hearing.

Dated: November 9, 1957.

Sharp Whitmore, Vincent H. O'Donnell, George Harpagel, Jr., Forrest E. Macomber, Gerald P. Martin, Thomas H. McGovern, John B. Surr, The Committee of Bar Examiners of the State Bar of California, By Sharp Whitmore, Chairman.

Clerk's Certificate to foregoing paper (omitted in printing).

OFFICE COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1956

No. 5

RAPHAEL KONIGSBERG, PETITIONER

vs.

**THE STATE BAR OF CALIFORNIA AND THE COM-
MITTEE OF BAR EXAMINERS OF THE STATE
BAR OF CALIFORNIA**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF CALIFORNIA**

PETITION FOR CERTIORARI FILED JULY 18, 1955

CERTIORARI GRANTED MAY 21, 1956

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 5

RAPHAEL KONIGSBERG, PETITIONER,

THE STATE BAR OF CALIFORNIA AND THE COM-
MITTEE OF BAR EXAMINERS OF THE STATE
BAR OF CALIFORNIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF CALIFORNIA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUG. 23, 1956

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[fol. A]

**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

RAPHAEL KONIGSBERG, Petitioner,

vs.

THE STATE BAR OF CALIFORNIA AND THE COMMITTEE OF BAR
EXAMINERS OF THE STATE BAR OF CALIFORNIA, Respondents,

PETITION TO REVIEW DENIAL OF APPLICATION OF RAPHAEL
KONIGSBERG FOR ADMISSION TO THE STATE BAR OF CALI-
FORNIA UNDER RULE 59(b) OF THE RULES OF APPEAL

To the Honorable Chief Justice and the Honorable Asso-
ciate Justices of the Supreme Court of the State of
California:

Petitioner, Raphael Konigsberg, by this, a-verified peti-
tion, respectfully applies for an Order to Review the Denial
of the Application of the Petitioner for certification to this
honorable Court for admission to practise law in the State
of California. The petitioner sets forth the following facts
as the basis for his petition for review:

[fol. B] 1. That on or about the 4th day of December,
1950, your petitioner filed with the respondent his applica-
tion to register as a student of law. Said application was
filed on the form prescribed by the Committee of Bar Ex-
aminers, a duly constituted committee established by the
Board of Bar Governors under, and by virtue of, the State
Bar Act (Stat. 1939, Chapter 34, page 247, as amended;
Chapter 4, comprising Section 6064, inclusive, of the Busi-
ness and Professions Code of the State of California).

2. That your applicant, fully, truthfully, and accurately
fulfilled all of the conditions and requirements established
for permission to take said bar examination in October of
1953.

3. That your petitioner was examined by the committee
of Bar Examiners in October, 1953, and passed the said
written examination, and thereby fulfilled the requirement
of the Bar Examiners in this particular.

4. That on or about the 18th day of September 1953, just

sixteen days prior to the conducting of the said bar examination, your petitioner was advised by the Southern Subcommittee of the Committee of Bar Examiners that he was personally to appear before the Committee. That your petitioner appeared at the said hearing on the 25th day of [fol. C] September, 1953, and was interrogated by the committee, under oath, at this time; that thereafter your petitioner appeared at further hearings with counsel before the Southern Subcommittee of the Committee of Bar Examiners on the 9th day of December, 1953, and the 27th day of January, 1954.

A full, true and correct copy of the respondent's official reporter transcript of each of these appearances is attached hereto and marked as Exhibit "A" and by reference made a part hereof.

That thereafter, on the 8th day of February, 1954, your petitioner was informed by the Southern Subcommittee of the Committee of Bar Examiners, that his application for certification for admission to the Bar in the State of California had been denied. A true and correct copy of this letter of denial is attached hereto as Exhibit C.

That thereafter your petitioner informed the Committee of Bar Examiners that he desired to appeal to the full Committee of the Committee of Bar Examiners, and requested a review of the proceedings.

5. That, thereafter, on the 13th day of March, 1954, a further hearing was held before the full committee of Bar Examiners in the City of Los Angeles, and proceedings, both oral and documentary, were taken at this time. A full, [fol. D] true and correct copy of the respondent's official reporter transcript at said hearing is also attached hereto as Exhibit B, and made a part hereof by this reference.

6. Thereafter your applicant was informed on the 17th day of May, 1954, that the full Committee of Bar Examiners had denied his application. A copy of this letter is attached hereto as Exhibit D.

7. This petition to the Supreme Court is for review of the decision of the Committee of Bar Examiners of which the applicant was informed on the 17th day of May, 1954.

8. Your petitioner requests review of the decision of the

Committee of Bar Examiners upon the following specified bases:

1. That the petitioner sustained his burden of proof of establishing his good moral character and all other requirements established by law in the State of California for applicants for admission to the bar.

2. That the committee erred in asserting that the petitioner had failed to meet his burden of proof of establishing his good moral character.

3. That no lawful evidence was received or exists supporting the denial of the application of the petitioner.

4. That the committee erred in requiring the petitioner to assume the burden of proof relating to Section 6064.1 of the Business and Professions Code.

5. That the committee erred in asserting that the petitioner had failed to meet his burden of proof relating to Section 6064.1 of the Business and Professions Code.

6. That the Committee of Bar Examiners failed to inform your petitioner of the information which the committee had received "adversely bearing on the moral character of the petitioner."

7. That your petitioner was not given a reasonable opportunity to rebut or explain the adverse information received by the committee.

8. That the failure of the committee to grant to the petitioner the rights listed in (6) and (7) above was a violation of the rules of the committee regulating the admission to practice law in California and, specifically, Rule X, Section 101.

9. That the denial of the application of the petitioner violates the rights of the petitioner under the First Amendment to the Constitution of the United States. [fol. F] 10. That the denial of the application violates the Fifth Amendment to the Constitution of the United States in that it deprives petitioner of liberty or property without due process of law.

11. That said denial violates the 14th Amendment to the Constitution of the United States in that it is an attempt by the State of California to deprive peti-

4
tioner of liberty or property without due process of law and denies petitioner the equal protection of the laws.

12. That said denial violates the Constitution of the State of California, Article 1, Sections 3, 9 and 13.

Wherefore, petitioner prays that an order be made herein for review of said denial and that upon said review it be adjudged that petitioner should be admitted to practice law in the State of California upon the taking of the proper oath and upon the payment of the necessary fees, and for such other relief as may be proper.

Respectfully submitted, Raphael Konigsberg, Petitioner, Edward Mosk, Attorney for Petitioner.

Duly sworn to by Raphael Konigsberg, juriat omitted in printing.

[fol. 1]

EXHIBIT "A" TO PETITION

THE COMMITTEE OF BAR EXAMINERS

SOUTHERN SUBCOMMITTEE

LOS ANGELES

In the Matter of the Application of RAPHAEL KONIGSBERG,
Application for Permission to Take Bar Examination

HEARING OF SEPTEMBER 25, 1953

APPEARANCES:

Graham L. Sterling, Jr., Esq., Chairman.

Harold A. Black, Esq., Member of Committee.

Arthur E. Preston, Esq., Member of Committee.

Leroy A. Wright, II, Esq., Member of Committee.

Raphael Konigsberg, Applicant.

Alma Stayton, Assistant Secretary.

Marion Farrell, Reporter.

Raphael Konigsberg, called as a witness, being first duly sworn, was examined and testified as follows:

Mr. Graham L. Sterling: Would you be seated, please, Mr. Konigsberg. Mr. Preston across the table from you

is a member of the Committee and has studied your file and reviewed it briefly with us. Mr. Wright is on my right, Mr. Black is on my left, and I am Mr. Sterling. Mr. Preston wants to ask you some questions.

[fol. 2] Examination.

By Mr. Preston:

Q. Mr. Konigsberg, in looking over your file it appears you came to Los Angeles in 1936, and at that time you had your A.B. degree and your M.A. degree; that you had attended Ohio Wesleyan—

A. By the Witness: Ohio State.

Q. Did you attend Ohio Wesleyan?

A. No, never.

Q. Did you receive both degrees from Ohio State?

A. Yes, I received my Bachelor's degree in 1931 and my Master of Arts in Social Administration in 1935.

Q. And that since you have come to this area you have been gainfully employed as a teacher?

A. No, not here; not in Los Angeles I have never been a teacher. I was a teacher in Cleveland, Ohio.

Q. Well since graduating from Ohio State and receiving your Master's degree, I take it that you have taught school, been a public relations investigator—

A. No, I was a teacher after my Bachelor's degree.

Q. When did you receive your Master's?

A. In '35. You see I got my Bachelor's in '31 and taught in Cleveland right after that. That was in the midst of the depression. They were not hiring teachers so many went into relief work. I became interested in social work. I [fol. 3] decided to go back to school and get work in social work. I was offered a scholarship to graduate school. I accepted it and took a year's training.

Q. Since coming to California what positions have you held?

A. Well the first job I had was offered to me by Miss Mary Stanton who was then the Executive Director of the Council for Social Agencies. That was almost a department of the Community Chest in 1936. It is now known as the Welfare Federation of Metropolitan Los Angeles. The

job she offered me was Assistant Director of the Research Department of the Council of Social Agencies.

Q. What other positions?

A. Well while I was working with the Council I was offered a job as Director of Community Service with the Federation of Jewish Welfare organizations, that was '37, by Mr. Charles Schottland, who is now Director of Public Welfare of the State of California. You want all the jobs in order?

Q. Yes.

A. Let's see. After that job the next one was with the State Relief Administration as Supervisor of one of the districts. As you may recall every county was divided into various districts, and I was Supervisor of the Adams District here in the City of Los Angeles, and after being fired from that job for the reasons indicated there, then I went [fol. 4] to work for what is now known as the City of Hope, and was at the Sanatorium in Duarte, California. It is just about thirty miles out from here. And well then I enlisted in the Army. Let's see, that job began in, I think it was January, 1940, as I recall, and in '42, I think '41, I ended that job. I was only working about a year when I was called into the Army. I enlisted in the Army, and received a direct commission in August of '42 as a Lieutenant of the U. S. Army. Well then I was discharged from the Army in April, I think it was, of '46 and went back to my job back at the Sanatorium out at Duarte again, and the job there before I went in the Army I was the Assistant Executive Director. When I came back from the Army I was Director of Social Service at the Sanatorium. As you may know, gentlemen, the city office here is just the administrative office. All the operations are out at Duarte. So I was working out at Duarte and not in the city, and I worked there from the time of my return from the Army in April of '46 to December of 1949 or the first of January. I think my termination date was of 1950, and I was dismissed there for the reasons I have given, over a professional issue. May I take just a half moment to explain this?

• Mr. Sterling: Yes.

A. I think if you are familiar with the social work profession there are various standards just like every other [fol. 5] profession has, and this institution which was dependent upon contributions to give free service was in financial straits and thought that one way of raising money would be to charge for admissions, which they hadn't done before, but they wouldn't do this or couldn't do this public relations-wise as it would hurt contributions, so they wanted me as Director of Social Service to state that all these applications had been passed on by my department as a social worker and were therefore eligible because they were indigent, giving the impression that they were eligible to come into the Sanatorium, and everything was on the up and up professionally speaking, but actually they didn't want the applications to come to my department; they would come to the Finance Department, the Fund Raising Department of the Sanatorium and would simply as a formality have me appear before their Admissions Committee to say everything had been okayed. There was an unprofessional thing, and I would have no part of it. I refused to be a party to it, and they dismissed me over that reason as will be verified by many prominent social workers in town. It can be verified by them.

After I was fired there at the end of '49 or the beginning of 1950, I, to use a common expression, was fed up with social work if that was the kind of situation you met with. I was interested in law. I planned after I came to Los [fol. 6] Angeles to study at night. It didn't work out. I had been in the Army and had a growing family and couldn't do it right away. Since I had the G.I. Bill available to me at the time, and they gave me substantial severance pay from the Sanatorium, I decided this was the time to go ahead and study law. That is what I have been doing.

Q. By Mr. Preston: Were you gainfully employed after you left the City of Hope in January of 1950?

A. Well, yes and no. That is I assisted a friend of mine, Mrs. Bass. I really can't claim I was gainfully employed. She was running a losing proposition, a weekly newspaper.

Q. What was the name of it?

A. California Eagle, and since I had already registered at S.C. and had been accepted, and was waiting until school

opened in September—at that time they wouldn't accept people in February; they did the following year, I believe, but they wouldn't admit any beginners in February—so it was a matter of marking time until September, so I helped her for about three or four months, perhaps a little over three months.

Q. That was in 1950?

A. Yes, just before school.

Q. What did you do on the newspaper?

A. Oh, I assisted her with the management aspect and [fol. 7] also wrote a weekly column. I don't recall if I did it every week, but most of the time I did. I had been doing a similar thing without salary too for the California Jewish Voice while I was at the Sanatorium, and I as I indicated had also done while at college, that is in the book review field. I had been interested in newspaper work. In fact I had once had the thought of journalism as a career but gave that up.

Q. Mr. Konigsberg, I hand you twenty-one photostatic copies of what appear to be photostatic copies of the editorial page of the California Eagle. I observe the same name as yours on a column on each of those photostats. Is that the article or are those some of the articles that you referred to? (Handing documents to witness)

A. This looks like the editorial page of the Eagle. Without reading them I wouldn't know if they were the exact articles I had written.

Q. Also I hand to you seven photostatic copies which you will find are photostatic copies of certain issues, certain of them, certain of them were small photostats. Some of them were enlarged while photostated. Would you glance at those too. (Handing documents to witness)

A. I don't recall all of these, but this is the type of thing I did write, yes.

Q. And if you will observe in the twenty-one photostats [fol. 8] I first handed to you those run from the dates July 28, 1950 to, I believe, the end of December, 1950. Will you examine those and see if that was the time when you were writing for the California Eagle.

A. (Examining documents) Yes, but you see I wasn't working for the Eagle all this time. In fact I think even after I started law school I was writing some of these on

week-ends and handed them to her. I wasn't employed all this time.

Q. See if I understand it correctly. You were employed perhaps for three or maybe four months for the California Eagle?

A. I think I started writing for her long before, not long before, but sometime before I went to work for this short period just until school opened, just on a volunteer basis. I was never paid.

Q. I gather some of those articles were written by you before you were employed, and some after you were employed.

A. Yes.

Q. Were they published with your consent?

A. Oh yes.

Q. Your name was used with your consent?

A. Yes.

Q. Would you glance at those Mr. Konigsberg, and while these large photostats are copies of seven of those there [fol. 9] are about fourteen of those which haven't been enlarged, but I think you will find entirely legible. Will you glance at those and see if they are copies of articles you permitted to be published over your name.

A. (Examining documents) Well, you have marked here which ones are enlarged? What is it you want me to answer?

Q. To merely see if those documents you hold in your hands, which are the twenty-one photostatic copies, are in fact accurate photostats of the pages of the California Eagle which they purport to be. The date is on the top of each one.

A. Yes. Well I don't know that these are the accurate photostats. I say they look like the editorial page of the Eagle as it used to look when I was with them. What way would I have of telling this was the exact photostat or not?

Q. To see whether or not you actually wrote the article is what I am driving at.

A. As I said before I wrote this type of thing. Now whether these are the exact ones, I don't know.

Q. Do you have copies of what you wrote in your private papers?

A. I have some of the columns that I wrote, yes.

Q. Would you glance through there and tell us whether or not you recognize any of those that you now have.

[fol. 10] A. (Examining documents) This one I have open here, this one about the Board of Education here in Los Angeles, I believe that I wrote something of this nature, yes.

Q. Will you glance at the rest of those.

A. Of course this is over three years ago, and I don't recall all that I may have written. What I can say is this is the type of thing we commented on in the Eagle.

Q. And from your examination you wouldn't say that those weren't the articles you wrote and authorized to be published under your name, would you?

A. I wouldn't say they weren't, and I wouldn't say they were. I would have to see the original paper, wouldn't I, strictly speaking, to determine whether this was the exact copy?

Q. That is a photostatic copy, Mr. Konigsberg. It is a photograph of the editorial pages of the Eagle on the dates which are at the top of the paper from July 28, 1950 to the end of December, 1950.

A. Well, as I said before this is the type of comment, the type of thing, that I was writing while I was there with the Eagle. It was also the type of thing I was writing while I was with the California Jewish Voice, and I might add this is the type of thing I was writing, very much [fol. 11] similar to it, while Orientation Officer for the Army and the Army orientation pamphlets I was writing. I don't recall whether the application form asks for details about military experience, but I was the Orientation Officer for the entire 7th Army in Europe. I was in that program for a little over three years as a Captain, and my job was to prepare discussion outlines on political issues, because as you may know the Army orientation program is a political education program, and General Marshall had Orientation Officers appointed in each of the Armies. I was the one in charge of this program in the 7th Army in Germany and France, and regularly not only did I write this material for the discussion outlines, but I also edited three Army newspapers for the Army, that is the 7th Army, in which this type of material was prepared.

Q. Did anyone else ever use your name in writing for the California Eagle?

A. I have no way of knowing.

Q. Did you ever know of anyone else using your name in writing for the California Eagle?

A. No, I can't say that I did know of anyone else using my name. I have no way of knowing.

Q. But you never noticed any such thing while you were doing some work either on a voluntary basis or otherwise during the last half of 1950?

A. No, I can't say that I did.

[fol. 12] Mr. Preston: Mr. Chairman, I would suggest that these photostatic copies be marked as exhibits and included in the file.

Mr. Sterling: All right.

By Mr. Preston:

Q. Mr. Konigsberg, you said you wrote the same general type of material for the California Jewish Voice?

A. Yes.

Q. When was that, during what period?

A. During the period I was working for the Sanatorium. Let's see, that would be, well I left the Sanatorium the end of '49, but I stopped writing for the Voice about a year or so before that. I think it was once every two weeks.

This was also on a volunteer basis for the Voice.

Q. That would be about the end of 1948?

A. Somewhere near that.

Q. And I assume you commenced that writing about the middle of 1946?

A. I don't really remember when I began.

Q. Did I understand you correctly to say that you came out of the Army in about the middle of 1946?

A. It was March or April, March I think it was in '46.

Q. It was shortly after you came out of the Army that you commenced writing for the California Jewish Voice?

[fol. 13] A. I don't think it was too long after. I don't remember. I went to work right away back at my old job at the Sanatorium. I don't remember how soon afterwards I started writing for the Voice.

Q. What were the names of the three Army newspapers you said you edited?

A. There was the first one— Let's see if I can remember the names now. I can tell you the stations where it was. The first one was in the Fort Devins General Hospital which was in Fort Devins, Massachusetts. This was a mimeographed Army orientation bulletin which I prepared practically the whole thing each week. These were all of course weekly publications. Then when I was in Africa with the Second Convalescence Hospital, it was part of the 7th Army, I don't remember the name we gave it—Oh yes, the Duffle Bag. The one at Fort Devins, I don't remember the name of that one. And then the third one was from the Headquarters of the 7th Army at Heidelberg, Germany. I don't remember the name of that one. I have some copies of it at home though. I think it was called I and E, Information and Education News.

Q. Would you care to submit those copies you have home for our examination?

A. Yes.

Q. If you will, please.

A. I will be glad to.

[fol. 14] Q. In the routine examination, Mr. Konigsberg, I assume that you know all applicants get a routine examination.

A. Yes.

Q. We obtained a press clipping to the effect that you had been subpoenaed before the Senate Fact Finding Committee on Un-American Activities.

A. No, not the Senate Committee. As I wrote in my application it was the House Un-American Activities Committee.

Q. I was referring to the State committee sometimes known as the Tenney Committee.

A. Yes, the State Senate Committee, that is right. I appeared before them. I don't remember the date either, about '47 or '48 as I indicate on my application, before the Tenney Committee, yes.

Q. Did you state that in your application?

A. Yes. Also the Dilworth Committee which I think was a sub-committee of the Tenney Committee.

Q. Dilworth?

A. Dilworth Committee.

Q. Did you testify before them?

A. Yes, I have that.

Q. Did you happen to have a copy of your testimony before that committee?

A. No, sir; I didn't have it. The committee never gave [fol. 16] me any, and I had no copy of my own.

Q. Did you present them with any written statement?

A. I don't remember. I am pretty sure I didn't present one to the Dilworth Committee. I may have to the Tenney Committee, but I don't remember.

Q. We have a copy of what appears to be a statement handed to the Committee by you which we obtained upon checking after reading the newspaper clipping, also on the top of that you will observe what appears to be a copy of a letter from you to the Tenney Committee. Do you have any recollection of writing the Committee such a letter?

A. (Examining documents): Yes, I do remember this.

Q. Will you glance at the statement attached to that?

A. This is the statement I was referring to that I gave to the Tenney Committee. At least it looks like it. Do you want me to take time to read it?

Q. Look it over and tell us whether that is the statement you submitted to the Tenney Committee.

A. (Examining documents): Well, there are a number of errors in it, typographical errors, but this sounds like the statement I may have handed to them. How can I be certain having written this, if I did, three years ago, no, five years ago, that this is an exact copy? I don't know. [fol. 16] You say this is the original statement I handed them?

Q. No, that merely purports to be a copy of the statement you handed to them. You will observe in that first letter—

A. Here. (Indicating)

Q. The one that you wrote to Senator Tenney, I believe, in September, 1948.

A. Yes.

Q. That you were referring to typographical errors on the first page. Do you recall whether those errors were in your copy or in a transcribed copy?

A. I don't. I don't think I ever saw a transcribed copy. You mean of the hearings?

Q. Yes.

A. I honestly don't remember. I don't think I saw any copy of the Committee hearings, and yet, well that raises the question what errors was I referring to. It must have been some copy they made of the statement I handed them.

Q. That is the reason I asked the question.

A. I really don't remember what copy I was referring to where these two errors appeared unless I saw some kind of statement. I don't remember seeing it.

Q. The errors that were referred to are properly described as typographical errors. I noticed one was "war" [fol. 17] and should have been "way." It makes no sense if it is war.

A. That is the one I referred to here.

Q. And there are a couple of other typographical errors of the same type in the statement. Did you notice them?

A. Yes, as I looked through it now.

Q. Except for those obvious typographical errors would you identify it as the statement you handed to the Tenney Committee on the occasion of your hearing?

A. I can't honestly say that. I don't remember since it was five years ago. As I said at the start I recall handing them a statement. Whether this is the detailed statement I just don't remember for certain. I don't remember what I told them five years ago.

Q. From what you have read would your best judgment be it is a copy of that statement?

A. Well I can't say that either.

Q. Do you have in your personal effects a copy of the statement which you handed to them?

A. No, I don't. I know that because I was looking for a copy when the application asked the date; when I thought I had to put the date of the hearing, I wanted something to indicate what the date was, and I couldn't find anything that would give me the date, and if I had a copy I would have had this date on there. So I just do not have a copy. [fol. 18] Q. May I see the statement? (Examining document) Do you recall whether or not you had your name on the top of the statement that you handed to them?

A. No, that I don't know. That is the form of the statement?

Q. Yes, as you handed it into them.

A. No, I don't remember.

Q. Were you in the U. S. Army for three and a half years?

A. Yes.

Q. In the United States, Africa, Italy, France and Germany?

A. Yes.

Q. As an Orientation Officer?

A. Yes.

Q. Responsible for the political education of thousands of our soldiers?

A. The program I was responsible for served some 400,000 men in the U. S. Army.

Q. "In my last post, with the rank of Captain, I was the chief orientation officer for the (blank) U. S. Army in Germany supervising the program for over 400,000 soldiers." That blank was referred to in your letter as a fill-in for Seventh?

A. Seventh U. S. Army.

[Vol. 19] Q. Have you looked through any other parts of this? Let me read another sentence and see if you can recognize this, picking it at random at the bottom of Page 2: "You deliberately manufacture the Red scare—a tested Hitlerian technique—to conceal your own reasonable failures to meet our people's needs, to divert our attention from your ultimate purpose: to oppress and enslave Americans and dominate the world." Do you recall that?

A. No, I don't recall making that statement, but it is not inconceivable that I could have made such a statement since this was the sort of thing we were discussing in the Army orientation programs, and this is, according to the date, shortly after I returned from the Army.

Q. You remember saying something like this, again picking a statement at random here on Page 3: "As a Jew, I accuse you of planning an America in which my people can find no security. You are capable of doing to us what the Nazis did.

"As a veteran, I accuse you of betraying all the promises

our government made to Americans when we went to war." Do you recall making a statement like that?

A. I don't recall making that statement. If it is in that record, if this is a true copy, I may have made the statement. I don't recall making it.

[fol. 20] Q. Is that something of the same type of statement that you made in these publications while you were Orientation Officer?

A. Yes, it would be very similar to that. I wonder if I may take a second to explain the orientation program.

Q. Yes.

I think that would help, and because it was the experience that I had in the orientation program as an Army officer that impressed upon me the importance of many of these issues that I have been discussing in these articles that you are referring to from the California Eagle, for example. You see, when General Marshall—and I had personal experience with this because I was in the Army at the time at the hospital where the wounded were coming back from the first North African invasions, and we were told this by General Pillsbury, who was then the Commanding Officer of this particular hospital I was in, rather Army post—saw that the greatest single cause of casualties of these people coming back from Africa was due not to enemy gun-fire or illness or accidents, which as I understand were the three general causes or three most general causes of casualties, but due to mental breakdown of the G.I., he sent a team of experts, Generals and psychiatrists and psychologists, to North Africa to determine what the reason was, and these men came back and told General [fol. 21] Marshall the reason so many G.I.'s were cracking up was because they just didn't know why they were fighting, they didn't know why they were asked to give their lives. They told them the G.I. had to be educated so they would understand why this country needed them, and why as a citizen he had to give his life if need be for the protection.

As a result of their recommendations this Army orientation program was developed, and many of us were picked out of various ranks. I was the Commanding Officer of what is called the Detachment of patients who had had either public relations experience or teaching experience,

and was asked to give series of lectures there at the school for the wounded G.I.'s, of those coming back from North Africa. As a result of this experience, because the Commanding General there and the others in charge of the First Service Command in Boston, which we were part of, felt I was doing a good job they sent me to the Army Staff Training School at Lexington, Virginia, Washington and Lee University, where we were given a very intensive course in the political objectives of the war, and that in essence is what it was, and that these political objectives were to be impressed, indoctrinated into, if you will, to use the language of the Headquarters, into the G.I.'s so they would understand why they were being asked to make these sacrifices.

[fol. 22] After I completed this course at Lexington, at Washington and Lee University, I was then sent overseas and first landed in North Africa with the 2nd Convalescent Hospital and was made the Orientation Officer there, and my job there was in effect a continuation of what I was doing at the hospital in Fort Devins, first to lead discussions. We had regular discussions every day with different groups of G.I.'s, of course, but each group would come at least once a week, and also with the officers, because this program applied to officers as well as enlisted men, and not only lead discussions but to train discussion leaders so others could spread out and lead discussions, and also to write discussion outlines and to edit these papers I referred to. I remained with the same outfit, the 2nd Convalescent Hospital, when we went into Southern France, and while there we were stationed near I don't remember what town, but we were stationed there for a while, and from there I went to the Headquarters in Germany, then Auxberg, later Heidelberg, was made Captain and made Orientation Officer for the whole 7th Army, in which job I had to do various things, of which editing the paper was just one of the minor things. I set up and organized and picked a staff to train discussion leaders at regular schools, in which G.I.'s were pulled in from units all over the American zone and trained as discussion leaders, and to do other functions [fol. 23] such as writing discussion outlines and preparing these various bulletins that we used, and then whenever

necessary to lead important discussions at the Headquarters itself which I would do personally as the officer in charge, and then to go to various units all over the American zone and lead discussions with officers and men.

Now I was very much impressed, obviously profoundly impressed with the importance of this work, because as General Marshall pointed out, and in many of the publications we got as part of the orders to continue this program, and General Eisenhower at the time also sent us many instructions that it was not enough even to help the G.I. understand why he was fighting there, he had to be taught that when the shooting was over he had to carry on his responsibilities as a citizen when he got back home. Well I believed that then and I believe it now very strongly, and that recent history has demonstrated to us there and elsewhere in the world that a totalitarian form of government can take over if the citizens aren't alert, and it is obvious from my record even long before the present period I have always tried to be an active and responsible citizen, whether it was in working for a playground in my community or as I have been a candidate for the School Board twice in this community, or as Mr. Tenney refers to there in this hearing I was on the Board of the California Labor School [fol. 24] which is now defunct, and in such activities I have tried wherever possible, in campaigns, for example, far back in the campaign with Governor Olson, and in recent campaigns in our district I was a candidate for Assembly in 1950, I have felt it was a vital responsibility to help preserve the gains we made by this victory over the forces of the enemy during World War II, and it is in carrying out that responsibility that I have done these other things.

And it seemed to me that I was simply continuing as a civilian what I had been taught to do, and I felt very much it was the right thing to do to carry out my responsibilities first in the Army and then secondly as a civilian after the Army. The distinction wasn't too great being a civilian or being in the Army, we are fighting for the same thing. In one you are in uniform and in the other you are out of uniform. That very simply is the explanation of this. To me this thing has been a matter of basic principle. I know and am not being naive about it, and not assuming you gentle-

men are naive about it, I know that in view of the temper of the times today that many people would look with disfavor upon comments such as those referred to here, but remembering the effect of three and a half years of Army indoctrination of this thing—and I say it in a very favorable way; I don't mean Army indoctrination in an unfavorable [fol. 25] way—this is a thing I should have been taught, that I was glad to learn and glad to carry on. I realize that these things look differently today in the light of the temper of the times today, but I still feel very strongly that an individual, if he is at all active as a citizen as I tried to be in all my adult life, and as you know I am older than most law students, I am now forty-two, I started my study very late, that a person who is active or has been active—of course I have not been able to do anything for the last three years because all my time has been devoted to studying law—that when you have all kinds of suspicions circulating in communities that inevitably it is the person who has been active who is suspicious. Otherwise whom else would they direct suspicions to?

So that simply is a very obvious and honest explanation of the attitude that I have expressed not only in material such as this, but in public speaking throughout the community on various occasions. All of this was done without any pay, simply as a part of my duty as a citizen carrying out, as I said before, things that I felt bound to do as an officer in the Army and as I enlisted to do, because as you can easily verify the President of the Sanatorium I was working with at the time, that is the City of Hope, tried to get me excused from the Army—deferred is the word—after I enlisted, but I refused to accept it. I was even offered double the salary to stay with the hospital. On the [fol. 26] basis of being Administrator of the hospital I undoubtedly could have been deferred. Many such people were being deferred at that time. I insisted on going in. I felt it was my duty to. That is the explanation for this.

Mr. Sterling: I take it, Mr. Konigsberg, the totalitarian form of government is repugnant to you.

A. Very definitely. ●

Mr. Sterling: I assure you I don't want to get into a debate on the subject, but the thing that strikes me about the

editorial line expressed in your writings in the Eagle is that it is not anti-communist, and I should think you would now realize that the communist government as it exists in Russia is a totalitarian regime and that therefore you would be anti-communist in your orientation of the citizen.

A. I grant you. This is, of course, the thing I was referring to a minute ago. During the period these articles were written, as I said this is the type of thing I wrote. I can't swear it is the exact thing I wrote obviously. During the time these were the issues that were bothering the people of the country, at least as I saw them. I don't have access and neither does any other private citizen have access to all the information our responsible leaders have, and so on. The issues that I commented on were of course those that [fol. 27] seemed important to me at the moment, and I could repeat a thousand times I am antagonistic to a totalitarian form of government, but when you have a weekly column, not a daily column, and a very limited one—I think my limit was 200 or 250 words—you can't cover all of the situations, and if you will note this, plus the material I said I would bring in, these Army newspapers that I had that I edited and wrote for, you will see that it is simply a continuation of this, the same very issues. As a matter of fact we were very definitely instructed in the Army, I have this statement or the printed memorandum signed by General Marshall and Eisenhower which points out the role that Russia at the time was playing as an ally. For example I remember specifically getting quite a reaction from the G.I.'s when discussing Russia's role in the Finnish War, over the signed signature of General Marshall we were instructed to tell the G.I. Russia's role in the Finnish War aided us because Russia would be stronger and would therefore be stronger as an ally during World War II which followed shortly after the Finnish War. You can see for over three years this sort of thing I was writing about and being instructed to talk and write about. I don't say in a sense I did it reluctantly. I accepted it as the truth. I believe it now as the truth. The fact that certain groups changed their views on what was accepted as the truth about the Soviet Union or Russia, whatever you choose to [fol. 28] call her, that doesn't change the basic nature of

certain facts or conflicting views. I have nowhere advocated—and I think if this is a complete listing, which I don't know of the articles that I wrote—anything but the strengthening of the democratic government.

I might refer you to the latest thing I have written which is on file at the U.S.C. Law School. It is a fifty-nine page paper on Justice Black's opinions, dealing not with this issue but related issues, opinions on free speech and so on during the present period in which the thinking is just the same.

Mr. Sterling: Don't you see some analogy between Germany's invasion of Poland and North Korea's invasion of South Korea and subsequent events with the Chinese Communist support of North Koreans?

A. May I repeat it? You mean Germany's invasion of Poland?

Mr. Sterling: Don't you think that the Korean business was an indication of aggression by a form of government which appears to be totalitarian?

A. You mean whether it is really the Russians that invaded North Korea, that came through North Korea?

Mr. Sterling: The Chinese.

A. Frankly I am not convinced that is what happened. It may be so that North Korea invaded South Korea. I [Vol. 29] am not convinced some foreign nation invaded South Korea. I think you are saying they sent troops into South Korea to invade.

Mr. Sterling: Not troops, but material support.

A. There may have been. I thought you were referring to an actual army. There may have been material. I think they made the statement at one time they were furnishing supplies, did they not?

Mr. Sterling: I don't know.

A. I think they stated that.

By Mr. Preston:

Q. Mr. Konigsberg, as I recall one of these editorial it, in effect talked about the liberation of the countries in Central Europe and criticized the complaint of certain newspapers and forces in this country accusing the Soviet Union in effect its engineering the take-over of the countries in Central Europe. As I understood your article it was in defense of the so-called liberation of the Central European countries such as Czechoslovakia and so forth. Do you recall that?

A. No, sir, I don't. Do you have it here? May I just have a drink of water, please.

... A ten minute recess was then taken ...

By Mr. Preston:

Q. Obviously the article I referred to is in one of the small mimeographs, and I have not yet located it.

A. I just don't remember it.

[Vol. 30] A. Would you put that in that same category?

A. Which category?

Q. Of political education. I gather what you have told us is that you are endeavoring to carry on a political education to protect now the civilians from any kind of a Fascistic control.

A. What did you say, I am carrying on a program?

Q. By these articles. Is that what you intend to do?

A. Are you referring just to the articles or what I have been saying about my activities in general?

Q. I was referring now to these articles.

A. I had no specific program in mind. I just felt as a citizen I was expressing my views, and each of us has a responsibility to inform others or try to inform others or help others understand the basic issues of the time, not on the basis of any formalized program, if that is what you mean.

Q. I had in mind the object you were trying to accomplish.

A. The object of the Army educational program.

Q. Now civilian?

A. But not a formalized program. What I mean is

simply that when the occasion arises I think a citizen has a duty to express his opinion if the situation warrants it. You don't get on every street corner and spout your opinion, [fol. 31] but in a club meeting or private conversation, and in this case I had the opportunity with the newspaper simply to express my views.

Q. Mr. Konigsberg, to whom is the California Eagle largely distributed, do you know?

A. Primarily to the Negro people in Los Angeles. Of course this was so then. I don't know what the situation is now.

Q. Referring to the period of 1950 when you were familiar with it that was true?

A. Yes.

Q. Do you recall your editorial headed, "The Gangsters, Incorporated", under your name which appeared in the California Eagle on October 5, 1950, one of the large photo-stats I showed to you?

A. I don't recall the contents. (Examining document) What is your question about this one?

Q. Do you recall it?

A. The only thing I can say with respect to any specific column is this is the type of thing I was writing. Whether this is the actual one, I don't know.

Q. It puts over the general idea that you were espousing, is that correct?

A. Well when you say general idea, what do you mean, this educational concept that I had?

Q. Yes.

[fol. 32] A. Well I think one can say that.

Q. And from having glanced at the article you would say that is one you might well have written during that period?

A. Yes.

Q. Do you believe that that is helpful education to the citizenry generally?

A. Well the basic idea here from a quick glance at it was that the criminal element is not only those that rob, kill and so on and so forth, but those who steal from the people in the way of large sums by appropriating them to people who are not friends of America. Let me refresh my memory. Of course I don't recall all that is in it. That

we the people are deprived, as I say here, of even half of the standard of living, or when people are underpaid or the toll that prejudice takes between people, for example, you have often heard it said that the cost of prejudice against the Negro people is a financial one as well as political and an economic one because of the degrees in efficiency: generally loss of living standard, loss of citizenship of groups involved and so on. That type of stealing is what I was referring to, a deprivation, lowering not only of living standards, not only of economic standards, but the political standards, not raising the level of political and social relationships in a community. This is the type of thing, as I [fol. 33] recall, I would say. Is this what you mean?

Q. Yes. What I frankly am trying to ascertain is understand your viewpoint. I trust you will appreciate that while you have been doing some of these things without pay as your sense of duty, so the members of this Committee without pay are obliged to check into things of this nature and I referred you to this editorial, "The Gangsters, Incorporated", to ascertain whether or not you felt that this was a beneficial bit of education, something that would help America, help its citizens.

A. I may have felt that at the time.

Q. Do you still feel that way?

A. I would say that I still feel that any deprivation, any lowering of living standard, any deprivation of civil liberties is a loss to America, yes, any act, official acts or even unofficial acts. For example, just this morning in the course in Constitutional Law we were reviewing and it was pointed out in the case of Marsh vs. Alabama where people were denied the right to congregate—this was a religious freedom case—on the streets of a company town, and the discussion which followed this review course I am taking, it was emphasized that the holdings of the Supreme Court of recent years have been that any deprivation of rights, whether in a company town or whether it is prevention, for example, of adequate representation on juries of Negro people or in school systems, in the actual school facilities, [fol. 34] that all this is a loss to American democracy, and I do believe that.

Q. Let me be specific and just read here, pick out of the middle here a couple of paragraphs.

A. Just picking out a paragraph from the context isn't always . . .

Q. I will take the whole paragraph. I will take two of them: "Not all the criminal gangs in American history put together were as great a danger to our country's welfare as are the generals who today urge that American youth be trained as 'killers'. No thieves were ever so corrupt as the Hoovers and Harrimans who say that to preserve the 'American way of life' we must choose guns instead of butter—who spend millions in poison gases and not a dollar for a cancer cure.

"None of the murderers have been so sinful as a Duke who uses religion to champion the anti-Christ. None such a threat to our security as a U. S. Attorney-General who denies us the right to bail and tells brother to spy on brother." Now that is two paragraphs taken from your article as indicated. What I am asking you is do you feel that that is the proper approach educational-wise for a person who seeks to be a member of the Bar? I am just trying to get your personal view. I am not criticizing. I am just asking.

A. Well as I say I don't recall what my thinking was at [fol. 35] that time when I wrote it, but I would question that today in view of what has transpired since.

Q. I notice at the bottom of this editorial it has in large letters "ACCOMPLISH YOUR MISSION! SIGN THE PEACE PETITION!" To what peace petition does that refer, do you recall?

A. That I don't recall. There was a bunch of peace treaties.

Q. This was in October, 1950. Wasn't that the circulation of the Stockholm Peace Petition?

A. I don't recall. There were several peace petitions, one after the other. It may have been that one, but I don't recall that specifically.

Q. You have referred to the fact that you testified before the so-called Tenney Committee here in California.

A. Yes.

Q. Do you recall being asked as to whether or not you ever participated in the activities of the California Legislative Conference?

A. I don't remember that specific question.

Q. Did you ever participate in the affairs of the California Legislative Conference?

A. Just which is the California Legislative Conference? There were a number of organizations that had similar names.

[fol. 36] Q. It is the one that had the publicity as being a communist dominated organization. Taking you back to the time of your testimony which you have identified as being back in, I believe you said 1947 or 1948, this record indicates you testified September 7, 1948 in the State Building here in Los Angeles.

A. Well I don't recall what work the California Legislative Conference did. There is an organization now the California Legislative Conference. Is this the same one? As I recall there were several organizations with similar names.

Q. California Legislative Conference, the time is September, 1948, this is the answer the record indicates that you gave: "It is a matter of public record I participated in the Legislative Conference, and I gave a report there." Does that refresh your recollection?

A. No, it doesn't. I don't remember that.

Q. You don't remember it?

A. No, I don't. As I say I was active in various ways. I just don't remember that incident or that organization.

Q. You a moment ago mentioned work in the Labor School, was it?

A. California Labor School. This was not work there but I was on the Board.

Q. On the Board?

[fol. 37] A. Yes.

Q. The Advisory Board?

A. Yes, I think it was called the Advisory Board. Of course it is now defunct.

Q. Is that the same Labor School that was characterized by the Tenney Committee as being communist dominated?

A. Well that may have been. Mr. Tenney characterized a lot of things as communist-dominated.

Q. Had that been so characterized while you were still working there?

A. That I can't honestly say, because right after that

hearing the thing folded up, the hearing at which I testified. I don't think it was in operation after that. At least I was never called to a Board meeting.

Q. Have you ever heard of the People's Educational Center?

A. Wasn't that the California Labor School?

Q. I believe it was a separate group.

A. No, I don't recall a separate organization by that name. California Labor School at that time had classes for trade unions downtown, and I don't recall any separate organization. Was this a division of the Labor School?

Q. No, People's Educational Center.

A. Then I don't know.

[fol. 38] Q. Do you recall being asked this question: "Q. They are also in Tom Clark's list as a Communist organization." That is referring to the prior questions. Here is the question in context: "Did you ever hear of the People's Educational Center?"

Your answer: "A. Yes sir."

Q. Were you ever a lecturer there?

A. I was very proud to be a lecturer there.

Q. When did you lecture there?

A. I don't recall the exact date.

Q. Was it in the fall of 1947?

A. It may have been.

Q. How long ago?

A. It was sometime in the past year.

Do you recall that?

A. No, I don't recall that.

Q. One more question and answer:

Q. What did you lecture about?

A. I lectured about my observations in Germany and what the Fascists did in Germany and what they are trying to do in the United States.

Do you recall that?

A. I don't recall that experience at all.

Q. Do you know who?

A. I don't remember that there was a separate organization called the People's Educational Center.

[fol. 39] A. Who was Sidney Davidson?

A. I don't know.

Q. Don't you recall Sidney Davidson?

A. No, I don't. May I ask is it made clear this P.E.C. was a separate organization of the Labor School?

Q. No, it is a separate question, and it appears to be a separate organization. You have no recollection of it?

A. No, I don't. I don't remember any separate organization by that name.

Mr. Wright: Did you ever teach at the California Labor School?

A. No, I never taught at the California Labor School.

Mr. Wright: Lectured?

A. No. As indicated I think once, was this shortly after I referred to the period shortly after I came back from the Army? At that time in various places over the community, maybe a half dozen places, I gave a report on my experiences in the war. I think as a result of the articles I had written or was writing for the California Jewish Voice several people called up and asked for this columnist to come and speak, and that is why I say I don't remember any separate organization P.E.C. I remember speaking at several places about my experiences in the war.

[fol. 40] Q. By Mr. Preston: Do you have any copies of the California Jewish Voice and the articles you wrote?

A. No, those I never kept.

Q. Do you remember that Mr. Tenney asked you this question:

"Q: Have you ever been or are you now a member of the Communist Party?"

A. Oh yes, he undoubtedly asked that.

Q. Did you answer the question?

A. I don't remember what I told him then, to tell you the truth, I probably did not answer. I probably didn't. I don't remember.

Q. Well, frankly, so we won't waste any time I don't think you did either, but there were lots of words.

A. This was in '48?

Q. This was in '48.

A. I don't remember exactly what I said. I don't think I answered.

Q. I assume that you are acquainted with the State

statute that we now have on our books where among other things we are obliged to inquire into this type of a thing, and where we find that any people appear to have the views of endeavoring to change our government and so forth by force or violence, or in other words the popular conception of communism that we are expressly prohibited from certifying that person. You are familiar with the statute?

[fol. 41] A. Yes, I am.

Q. Mr. Konigsberg, are you a Communist?

A. Mr. Chairman, I would be very glad to answer that question.

Q. If you will answer the question, I would be very happy to have it.

A. I would be very glad to answer it if the circumstances were different. That is when I am faced with a question of this kind or when anyone else is faced with a question of this kind today what he is faced with is the fact that various nameless accusers or informers, or call them what you will, whom he has never had a chance to confront and cross examine, he is put in a position of answering these statements or accusations or suspicions, and without any of the protections that ordinarily exist in such a situation, and I don't think that I can place myself in that position of having to answer something out in the void, some statement. I know these statements have been made obviously. I am not pretending to be shocked or naive about this. I can say very definitely I did not, I don't, I never would advocate the overthrow of the government by force or violence clearly and unequivocally, but to answer a specific question of that kind, whether I am a member of this party, that party or the Communist party, that puts me in the position, what [fol. 42] ever the truth is, whether I was or wasn't you would get a dozen informers who would say the opposite, and as indicated by an editorial just two or three days ago in the Daily News questioning seriously why the word of these informers, these turn-coats is accepted unquestionably as against the word of other responsible citizens. Therefore, Mr. Preston, I do not think that under these circumstances, first, yes, I understand that under the law as it is today you may ask me specifically, do I advocate the overthrow of the government by force or violence. I

answer specifically I do not, I never did or never will. When you get into the other question of specific views in a political party, it seems to me only the fact, the right of political opinion is protected under the First Amendment and is binding on the states. Certainly attorneys ought to be in the leadership of those who defend the right of diverse political views. I think the First Amendment is important. I don't know what else I can add except that I think that attorneys, let's say the Bar Association, ought to be in the forefront of those defending the right to divergence of political views, and that I don't think any individual can be or should be placed in that position, unless of course it were a situation where you had the right to confront the other individuals or the sources. Frankly I don't have much regard for the statement of a Mr. Tenney and many [fol. 43] other people don't. His opinion of what is a good American isn't my opinion. I will state that very frankly. So his statement about me doesn't concern me, doesn't bother me, but when we get down to the specific point and what you are touching upon now is the area of free speech or the right to diverse political opinion, it seems to me that attorneys should be in the front ranks of those defending that right, and I answer again on the specific question of force and violence, I did not, I don't and never would advocate the overthrow of the government by force or violence.

Q. When answering it you don't intend to give us a specific categorical responsive answer?

A. As I said I would be very happy to if we met out in the hall. I would be glad to answer you, but you see under these circumstances, that is I am speaking now under oath and I am speaking for the record, I am speaking against in a sense, whatever evidence that may be in the files—I shouldn't dignify it by calling it evidence; I should say whatever statements may be there from various informers. I have told you about my record both in the Army and in the community. I have been active politically, I admit it. I am proud of it. I would be happy to discuss it. This is the record that I think should be the basis for judgment, not the record of some hysterical characters that appeared before the Tenney Committee or any such group.

[fol. 44] Q. I am not asking anyone else. I am trying to

ask you because you are the one who is seeking admission, the privilege of practicing law in this state. That is the reason I am asking you the question. I made the question very broad, and what I would like you to tell us, if you will answer the question; now of course as you well know and you have told me in your answer up to this point, you don't have to answer the question, of course you don't have to answer the question, but we feel that on a matter of this kind, this kind of information, we have a job to inquire about your character. The statute says character, it doesn't say reputation. The only way I can find out and aid this Committee in finding out about your character is to ask you these questions, not what someone else thinks about you, your reputation. That is the reason I have asked the question. Could you give us a categorical answer?

A. I can only give you the answer I have given you, and I would be very happy to answer that under other circumstances.

Q. In other words, you feel that asking you that question is a violation of your constitutional rights?

A. Of free opinion, free speech, yes. I might refer you, Mr. Preston, to an editorial in the American Bar Association Journal. I don't recall the exact date. I used it in [fol. 45] connection with this paper I wrote for the U.S.C. Law School, where the editorial and commenting on an article that appeared in the very same issue. I think it was December, 1950, about that date. The article dealt with a former German jurist, I believe he was, or else he was a lawyer, in which he pointed out how the system of the administration of justice broke down in Germany, and he pointed out that one of the things that led to this breakdown was the activity that some segment of the legal profession there indulged in and/or failed to indulge in by protecting the rights of the people there. The editorial cautioned the Bar in this country to avoid the same error. That is why I have said several times this afternoon that I think the legal profession has to be in the front ranks of those defending the right to diverse political opinion. I am referring to the freedom of free opinion and free speech.

Q. Mr. Konigsberg, have you ever knowingly partici-

pated in an organization which you then believed was sympathetic to the communistic cause?

A. No, I can't say I knowingly did that, because I don't think it would have made a great deal of difference to me if I had known one way or the other, assuming that the objectives such as those I have told about in the Army orientation program and so on, whether it might be a School Board election, and as I pointed out I was a candidate twice sponsored by the Citizens Committee for Better Education. I don't recall the specific issue arising, but, if you are asking me I don't think it would have made a great deal of difference to me who was supporting the organization or the campaign if the objective was the same, say a better School Board or whatever the issue might have been.

Q. Mr. Konigsberg, I assume that you know that your name has been listed in the public press by witnesses before the Congressional Un-American Activities Committee.

A. Yes.

Q. And have been identified by persons who said that you were a member of the Communist Party at the same time they were.

A. I saw that report. That is the sort of thing I was referring to a moment ago when I referred to the various accusations.

Mr. Preston: I haven't any other questions.

Mr. Wright: Mr. Konigsberg, are you familiar with the stand taken within the last several months by the American Association of Universities?

A. By the Witness: What stand do you mean?

Mr. Wright: With reference to membership in the Communist Party.

A. You mean whether they should be teachers on the campus?

[fol. 47] Mr. Wright: The specific stand I had reference to was whether or not teachers properly should when asked by their colleagues were they or were they not members the stand was, as I recall it, that they should not resort to the protection afforded for that purpose because

they owe full candor to their college. What is your belief concerning that stand?

A. I think you are referring to the Fifth Amendment.

Mr. Wright: Yes.

A. Well I am not urging that at this time or not discussing it. I didn't claim it. I don't think I am on trial here. I am simply saying that I was only referring to the free speech guarantee of the Constitution. Now I think what you are referring to is the fact that some of the professors, I believe, were claiming the Fifth Amendment guarantee, were you not?

Mr. Wright: I believe some of them were; but I am referring more to the basis, the underlying—what I conceive to be the underlying—reason for that stand of the Association, namely that each teacher owed his college full candor concerning his beliefs, his memberships, and his activities. Do you subscribe to that, or do you disagree?

A. Well if I understand you correctly you mean that a professor, let us say, on a campus should tell his colleagues [fol. 48] what his political views might be.

Mr. Wright: Yes.

A. No, I don't think that is indicated at all. Why? If we have a guarantee of the right to your own opinion I don't say he shouldn't tell it, but to compel him to tell it, no, I don't. You asked me whether I agreed he should be compelled to say it, is that what you were asking?

Mr. Wright: When the problem of whether or not he should continue to teach is before—

A. I wasn't referring to whether he is qualified to teach or not. I thought you were asking me whether he should be compelled to divulge to his associates what his political views are.

Mr. Wright: In this sense his employer being the university.

A. Well if the First Amendment means anything doesn't he have a right to whatever views he holds?

Mr. Wright: Yes.

A. If he is to be compelled to divulge them then that right is meaningless.

Mr. Wright: No.

A: Perhaps I don't understand.

Mr. Sterling: Let me try to clarify it as I understand it. This Association of Universities takes the position that complete candor on the part of the teacher with respect to [fol. 49] his political beliefs, and in particular whether or not he subscribes to the beliefs of the Communist Party is a prerequisite to continuing in the teaching job. He doesn't have to disclose whether or not he is a Communist or is sympathetic to the Communist beliefs, but that if he doesn't answer those questions with complete candor he has lost his right to a position in the teaching community. Translating that into terms of an Association of lawyers such as our State Bar or any Bar Association, you are seeking admission to the profession and that we as your prospective colleagues have a right to expect complete candor from you on this particular question, and that if you don't wish to be completely candid with us then we are justified in saying you don't belong in our profession. That I think is the stand that the American Universities took.

A: I understand that. I can only say what I said several times already. Under those circumstances the constitutional guarantee of free speech means nothing, if it doesn't mean you can keep your views to yourself, and certainly lawyers recognize that and should be among the first to defend that right. I think the legal profession, particularly the leaders of the legal profession, should be the first to insist on it. Put another way, of what meaning is any constitutional guarantee if it becomes a crime to invoke that guarantee?

[fol. 50] Now I understand—I am old enough to understand—and I know you gentlemen are too that there are passing moods and passing periods in any country's history. Today this seems to be a very difficult period. In a few years I think the situation will look different, as it did a few years previously. I think it will be recognized again. I say this as a former teacher of American history. I taught in high schools in Cleveland. You are familiar with American history. I am somewhat familiar with it. There have been periods like this too that understanding the basis on which the constitutional guarantees were developed to begin with, to participate in what I think is an undermining of them I cannot do no matter what the price.

is, because it seems to me that any constitutional guarantee is meaningless if it becomes not a crime necessarily to invoke it or if it becomes a penalty, or if you suffer a penalty for invoking it. You gentlemen are familiar with situations in American history. I can't go along with that view. I don't think it is true. I don't think it is good history, and I don't think it is democratic. What guarantee is there in a Constitution if you become penalized for invoking them? What do they mean then? And as I have indicated before, this is such a profound matter of principle with me that no matter what the price is I cannot give it up. And surely leaders of the Bar, and I assume, not knowing any of you gentlemen, but by virtue of your position on the Committee [Vol. 51] you are among those that lead the Bar Association, you should be among the first to combat this notion that it is wrong to use a constitutional privilege which only after many centuries of tragedies and wars and injustices was finally incorporated in the great Constitution. That is the basic principle on which I am operating.

I was aware of this problem when I started to study law, but you were aware of all this record. Everything that you have referred to transpired before I started the study of law. If you feel that there is a question of my fitness, shall we say, for the Bar, that question could have been raised three years ago. There is nothing I have done frankly since then. I haven't had time to do anything. Not that I would have in any event, but I was aware when I registered to study law, and you have my application as a registered law student, that these problems might arise in three years, and yet because I wanted so much to study law, when a man of thirty-nine decides to change his career it is no joke or lark, it is a dead serious matter, there must be profound reasons for it. That we don't need to go into. I just think I would be a good lawyer. I have had seventeen years of experience in social work, working with people, which is an experience that many lawyers do not have until they have been in the profession for many years. I think I would be a good lawyer, a helpful lawyer. I think I have [Vol. 52] demonstrated I have been a good citizen.

Mr. Sterling: If you accept as true the premise that the Communist Party, as it is embodied in the present Soviet Union government, has for its objective the overthrow of

not only the government of the United States but any other non-Communist government, and that that overthrow may be accomplished either from within by a bloodless revolution or if necessary by force, if you accept that premise then I think that your argument about constitutional rights of free speech and right to have your own political views and so on go by the board because then it seems to me that we are asking you no more than whether or not you belong to or believe in the principles of such an organization as *Mafia*, which is pretty generally, I think, regarded as one which has objectives that can be accomplished according to their tenets by what we regard as criminal acts. Now if I asked you whether or not you believed in the right to murder you would answer me no, I think, but as I say this whole business seems to be a turn on whether you accept the premise that the Communist Party—I am paraphrasing for the purpose of illustration—if you accept the premise that the *Communist Party believes in murder* and has that as its objective then I don't think you have a right or justification to refuse to answer the question of whether [fol. 53] you belong to the Communist Party or whether you believe in its principles, you see.

A. Well I can't argue with you.

Mr. Sterling: Well, you can say that you think my premise is wrong. You can say the Communist Party as constituted does not believe in the overthrow, is not trying to and does not have as its objective the overthrow of the United States by one means or the other. Then I simply have to disagree with you because it seems to me that is their objective.

A. Well, are you suggesting, Mr. Chairman, that since of course this is a critical period in our country's history that in the face of such threats as you are basing your premise on that we have to forego then the use of the constitutional privileges or the protection of the Constitution, is that what your proposal is? I would like to understand your argument.

Mr. Sterling: No, as I say you don't feel there is any question of constitutional privilege when in a proceeding such as this where we are charged with determining the moral qualifications of an applicant in the profession, you

don't feel that the constitutional privilege is hurt if I ask you if you believed in murder?

A: No.

Mr. Stessing: You will answer that unhesitatingly, "No, I don't believe in murder." So I say that most of us now [fol. 54] accept as true the premise that the Communist Party as we know it and as embodied in the Russian Government, the present Soviet Union Government, does have as its objective world domination by the Communist Party. So we accept that premise. Therefore it seems to us that we have the right to ask the question of applicants for admission to the Bar, because our statute as we pointed out says that you are not qualified if you do believe in overthrowing or advocate the overthrow of the United States by force or violence.

A: I am answering specifically in terms of that statute too that I do not. That is the question you are asking me specifically. I am answering I never did, I do not and I never would advocate the overthrow of the government by force or violence. I do believe like leaders like Jefferson people should have the right through discussion, ballot, the minority view becomes the majority view, that changes like that are sought through the ballot box but never through force and violence. That I do not believe. I think my whole experience has shown that. I don't know how more direct that can be, and the only reason as I said before that I don't specifically answer the question, "Are you a member of this political party?" is because of the situation anyone is in who is faced with accusations as indicated by the newspaper report, accusations by people who I think are gradually being discredited by many [fol. 55] sources, when you don't know who it is who is accusing you, you don't know on what evidence, anonymous facts, you never have a chance to cross examine them, how can anyone be put in that position? What can you fight except wind-mills and air in such a situation. The direct question, "Do you believe in force and violence?" I answered that.

Mr. Black: It still puzzles me a little to see why it is that you think you are prejudicing your own position by taking

a position on that irrespective of whether there is any other evidence in the file or not.

A. Because very practically this as you know has happened before. In the theory of today it is the words of these informers that is accepted above the words of anyone else.

Mr. Black: How do you know?

A. The newspaper report says so. Isn't that the report you were referring to where I was named before the Un-American Activities Committee?

Mr. Preston: Yes, but that doesn't answer the question.

Mr. Black: How do you assume this Committee accepts the hearsay report against your direct testimony?

A. I am not assuming that. I didn't mean to give that implication. What I am saying is that when on one side we have these hearsay reports and nameless informers, [fol. 56] and I don't need to go into a discussion of how willing they are to sell their evidence, if it is evidence, when there is the possibility of their word being placed against my word or anyone in my position, and because in view of the hysteria today their word is accepted. All it has to do is appear in the paper and you are discredited. Wasn't it two or three weeks ago in San Francisco a woman won an amount in a suit for being called a "Red", a teacher, when it is prima facie—libel, whatever the case was. Then it becomes not only a basic matter of principle on the First Amendment but a matter of protecting yourself in a legal situation, because this is an official body. I am not talking to a group of people like I would be talking to on the street.

Mr. Sterling: You are afraid if you answer the question as to membership in the Communist Party in the negative and say, "No, I am not a member and I never have been," assuming you made that answer, you are afraid that we could find half a dozen people who would say that you were and had been, and therefore if you were on a perjury trial and the jury believed them and not you, you committed perjury.

A. I am saying no matter what answer I gave whether I was or wasn't, undoubtedly there would be several whom you could get to say the opposite, and as I said before—[fol. 57] Mr. Sterling: Subjecting you to a perjury charge?

A. Yes. As I said before if you want to ask me outside in the hall I will tell you, but in view of these circumstances where you just have no right, you have no opportunity rather, to defend yourself against these people, I don't think that is fair play. I don't think that is justice. I don't think it is what the American democratic system teaches.

Mr. Preston: There has been reference to the newspaper article I looked at a little while ago. It is May 23, 1952, the Los Angeles Times, and the party referred to as having identified Mr. Raphael Konigsberg is a Mrs. Bennett. Do you ever recall knowing a Mrs. Bennett?

A. I don't recall, no, Sir.

Mr. Preston: I see that she was formerly married, according to this newspaper article her former husband was Charles W. Judson. Did you ever know a Mrs. Charles W. Judson?

A. No, I don't recall any Mrs. Judson. Is this Judson in the newspaper field? I remember seeing that name in newspaper columns. I don't remember knowing Mrs. Judson.

Mr. Preston: Did you recall ever knowing a Mr. Charles Judson?

A. No, I do not. I recall seeing such a name in the [Vol. 58] Daily News I believe it was. I think it was a reporter by that name. I read that regularly.

Mr. Preston: I see by the article here he apparently was in the newspaper field because it mentions that he was with the Los Angeles Evening News.

A. I take that paper every day. I think I have seen that name in the paper. I don't recall personally knowing either him or his wife.

Mr. Preston: Well, Mr. Chairman, earlier I discussed with Mr. Konigsberg and read him excerpts from this statement that was from the Un-American Activities Committee submitted by Mr. Konigsberg on the hearing on September 7, 1948. I think that should be an exhibit.

Mr. Sterling: The Tenney Committee?

Mr. Preston: Yes, on September 7, 1948.

Mr. Sterling: All right, it will be made a part of the file.

Mr. Preston: Are there any further questions?

Mr. Sterling: I have no further questions.

Mr. Preston: Is there any further statement you wish to make, Mr. Konigsberg?

A. By the Witness: I can't think of anything I could add to what I said unless there is some specific point you want me to enlarge on.

Mr. Preston: I assume, of course, if I ask you the question as to if you were ever a member of the Communist Party you would give me substantially the same answer.

[fol. 59] A. Yes, I think I would.

Mr. Preston: You observed, I assumed, Mr. Koenigsberg, I didn't ask you in the first instance if you were a member of the Communist Party. I asked you if you were a Communist. I recognize there is a philosophical Communist. I made my first question very broad to include that.

A. I understood you to say a member of the Communist Party.

Mr. Preston: Would your answer be any different?

A. I thought you said a member of the Communist Party.

Mr. Preston: I deliberately did not. The first question we discussed at length is, "Are you a Communist?"

A. I will say no, definitely no. The only thing I would describe myself very simply as one who has read a lot, studied a lot, because as a teacher of history and political education in the Army I believe strongly in the fundamental concepts of our democratic system.

Mr. Preston: Your answer that you gave was directed to the question, "Are you a member of the Communist Party?"

A. Yes, and solely to that. If you want a categorical answer to "Are you a communist?" the answer is no.

[fol. 60] Mr. Preston: You gave us that.

Mr. Sterling: That is your answer.

A. By the Witness: No.

Mr. Black: Would you care to state whether you have ever been a Communist?

A. Do you mean by that as he is making the distinction philosophically or a member of the Communist Party?

Mr. Black: I mean in the same sense you have just answered that you are not now a Communist.

A. I would say my thinking has only been what I described a moment ago as being based on the elementary concepts of the American democracy, assuming that you mean do I think like a Communist; that is assuming we

have some common understanding what you mean by that term.

Mr. Sterling: We are not talking now about a membership in any party.

A. Yes, philosophical views. You asked me to bring this material from the Army newspapers, I think.

Mr. Preston: Yes.

A. I think surely the material published under Army supervision and approved would indicate my thinking as much as anything else, and to bear out the point I made much of the material or thinking represented in these columns with very much the same or a continuation of the [Vol. 6] thinking I showed in the Army. I would like to bring that in and show it to you.

Mr. Preston: We would be happy to have anything you would care to bring in.

A. When would you like to have it?

Mr. Preston: As soon as you wish to bring it in. Could you bring it in Monday, would that be convenient?

A. Oh sure. I don't recall whether I have a complete file. I think I have most of this Army material.

Mr. Preston: Fine, and if you have any of the California Jewish Voice.

A. No, I know I didn't keep any of that stuff.

Mr. Preston: Can you obtain those?

A. I suppose if I went to the publisher, I would have to go back to his files. I don't know whether he would want to do that. I am sure it would be available to the Committee.

A ten minute recess was then taken.

Mr. Konigsberg remained in the hearing room while the following witness testified.

[fol. 62]

ALICE KING BENNETT,

called as a witness, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Preston:

Q. Please state your full name for the record.

A. My name is Alice King Bennett.

Q. Mrs. Bennett, my name is Arthur Preston. Mrs. Bennett, earlier in this matter we referred to a newspaper article in the Los Angeles Times dated May 23, 1952 which purported to quote you as identifying certain persons apparently in this general area as having been members of the Communist Party. Do you recall ever knowing a person by the name of Raphael Konigsberg?

A. Yes, I do.

Q. Where did you know Mr. Konigsberg?

A. As a member of the small unit in the Communist Party.

Q. Where?

A. In Los Angeles.

Q. When?

A. About 1940. Pardon me, '41 I think it was.

Q. Were you a member of the Party at that time?

A. Yes, I was.

Q. Did you ever see him at Communist Party meetings?

[fol. 63] A. At the meetings of this unit.

Mr. Sterling: What was the unit called, do you recall?

A. I don't know as it had a name. I don't recall the number that it was assigned. It was a very small unit, not more than six or seven people in it, professional people of various kinds who were difficult to assign to other units by virtue of their professional status.

Mr. Sterling: Were these meetings held in a private home or an office?

A. No, they were held in private homes.

Mr. Sterling: And they were never attended by more than six or seven people?

A. Not that I recollect now.

Mr. Sterling: Was your name then Bennett?

A. No, my name was then Judson.

Mr. Sterling: Your whole name?

A. Alice King Judson.

Mr. Sterling: Your husband was named?

A. Charles W. Judson.

Mr. Sterling: And Mr. Judson was employed on the Daily News as a reporter?

A. No, he was the Managing Editor at that time.

Q. By Mr. Preston: Were any of these meetings ever held at your home, Mrs. Bennett?

A. Of that particular unit I don't believe so, although [fol. 64] frankly my memory would not be trustworthy on that point.

Q. Do you recognize anyone in this room as being the person you have referred to as Raphael Konigsberg?

A. This gentleman (indicating Mr. Konigsberg) is Raphael Konigsberg on my right.

Q. Are you certain of that?

A. There is no one else here who is the least bit familiar to me in appearance except this gentleman.

Mr. Preston: I have no other questions.

Mr. Sterling: Did you see Mr. Konigsberg on more than one such occasion?

A. Yes, I did see him more than once.

Mr. Sterling: At one of these meetings?

A. Yes, I saw him only at the meetings. I didn't know him otherwise. The meetings didn't continue for more than three or four months, I don't believe.

Mr. Sterling: How often did they occur during the three or four months approximately?

A. It might have been every two weeks or it might have been once a week; I have forgotten.

Mr. Sterling: Do you have any questions?

Mr. Wright: No.

Mr. Black: What was the duration of each meeting, approximately?

A. By the Witness: Three hours.

[fol. 65] Mr. Black: You mean in the evenings?

A. Yes.

Mr. Black: And in Los Angeles?

A. Yes. Well I don't believe the meetings were necessarily in the City of Los Angeles. I can recall one or two occasions when they were in other towns nearby.

Mr. Black: Did the members of the group have any evidence of identification with the party?

A. No.

Mr. Black: So your testimony is based merely on the presence of Mr. Konigsberg at these meetings?

A. Yes.

Mr. Black: Do you recall whether he actively participated in the discussions held at the meetings?

A. I believe he did to the same extent as we all did.

Mr. Black: Did this group disband at some period to your knowledge?

A. My memory is not at all clear. I don't recall whether the group disbanded first or whether my husband and I dropped active contact with it before it disbanded.

Mr. Black: And can you place approximately the date of the last meeting which you attended?

A. Very approximately I would say that it was quite early in 1942.

Mr. Black: I have no further questions.

[fol. 66] Mr. Preston: I want the record to show that Mrs. Bennett came here under Subpoena issued by the Committee.

Q. By Mr. Preston: Is that correct, Mrs. Bennett?

A. By the Witness: Yes, it is.

Mr. Sterling: And I think we should also state for the record that before we asked Mrs. Bennett to testify here today we told Mr. Konigsberg that she was going to testify, and he requested that he be represented by counsel; that request was granted; that Mr. Preston then asked Mr. Konigsberg if he had any objection to Mrs. Bennett testifying today without Mr. Konigsberg's counsel being present so long as the hearing could be continued and Mr. Konigsberg through his counsel would have an opportunity to examine the transcript and to cross examine Mrs. Bennett at a later hearing.

The Witness: I will be cross examined at a later hearing?

Mr. Sterling: Yes, Mr. Konigsberg has requested the privilege of having his counsel represent him in this hearing.

ing, and he is entitled to that, and that request has been granted, and his counsel would have a right to examine Mr. Konigsberg further and he would have a right to cross examine you.

The Witness: Where would such a cross examination be held?

[Ed. 67] Mr. Sterling: We haven't arranged it. It presumably would be some afternoon next week.

Mr. Preston: Here.

Mr. Wright: Mrs. Bennett, this group of which you speak, how was it known, as a parlance of the party?

A. By the Witness: Well it wasn't known in any particular way. It was something of an underground unit inasmuch as the members were not known as Communists in any way, and the reason for being in this unit was to preserve their non-identity as a Communist.

Mr. Sterling: What was the purpose of the meetings?

A. To discuss current events according to communist interpretation and to discuss whatever methods or plans the individual members could to further the communist policy at the time.

Mr. Wright: I have one more, if I may. How was the group gotten together?

A. Well, you mean how were the members—

Mr. Wright: Selected, and how did they come in contact initially with each other?

A. Well the assignment of the members was done by higher-ups who made such assignments to units. I couldn't tell you very much about that, but we were simply assigned by the Membership Director, I suppose, to that unit.

[Ed. 68] Mr. Wright: How were you notified of the meetings?

A. Usually by telephone.

Mr. Wright: By whom?

A. Well, I really can't recall at this time. We were either notified by telephone or else at the ending of the meeting we were told where and when the next meeting would be.

Mr. Wright: That is all.

Mr. Sterling: Are there any further questions?

Mr. Preston: No.

Mr. Black: No.

(Off-the-record discussion.)

Mr. Sterling: We will go back on the record, and we will continue this hearing to next Thursday afternoon at 3:00 P.M. We will stand adjourned. Thank you for coming in, Mrs. Bennett.

"End of Session"

[fols. 69-70] Reporters' Certificate to foregoing transcript omitted in printing

[fol. 71]

THE STATE BAR OF CALIFORNIA

COMMITTEE OF BAR EXAMINERS

SOUTHERN SUBCOMMITTEE

LOS ANGELES

In the Matter of the Application of RAPHAEL KONIGSBERG
In the Matter of the Application of RAPHAEL KONIGSBERG,
Application for Permission to Take Bar Examination

(No. 1194)

HEARING OF DECEMBER 9, 1953

APPEARANCES:

Graham L. Sterling, Jr., Chairman of Committee
Harold A. Black, Member of Committee
Arthur E. Preston, Member of Committee
Leroy A. Wright, II, Member of Committee
Alma Stayton, Assistant Secretary
Raphael Konigsberg, Applicant
Edward Mosk, Applicant's Counsel
Marion Farrell, Reporter

Mr. RAPHAEL KONIGSBERG was then sworn in.

Mr. Graham L. Sterling, Jr.: My recollection is that at least one of the purposes of the continuance of this matter was to give Mr. Konigsberg an opportunity to be represented by counsel, and to cross examine Mrs. Bennett.

Mr. Edward Mosk: That is my understanding, sir.

Mr. Sterling: Do you wish to make any statement [fol. 72] before we have Mrs. Bennett come in?

Mr. Mosk: Well, may I say, may I know the names of the members?

Mr. Sterling: Arthur Preston, Leroy Wright of San Diego, Harold Black of Los Angeles on my left, and I am Graham Sterling.

Mr. Mosk: I think I talked to all of you on the phone, but I don't always know a face. I would just like to say this very briefly that Mr. Konigsberg, of course, consulted with me immediately after the last hearing, and I have examined the transcript of the last hearing and would like to have the opportunity for a fairly brief but some cross examination of Mrs. Bennett. We should also like the opportunity to present some additional testimony with relation to the matters that are referred to in the transcript, and then at the conclusion of that we would like the opportunity to present certain character witnesses or discuss the matter of presentation of affirmative evidence of good character. I think perhaps at the conclusion might be a wiser time to discuss that matter than now. That is the only thing I would have to say at this time.

Mr. Sterling: All right, Mr. Mosk, you want to have Mrs. Bennett come in.

Mr. Mosk: I presume that we will follow general rules of evidence in examination even though—

[fol. 73] Mr. Sterling: We are very informal, Mr. Mosk, and our rules say we don't have to pay much attention—

Mr. Mosk: I am afraid I don't know any other way of questioning, however.

Mr. Harold A. Black: You won't be penalized for following the rules of evidence.

Mrs. ALICE K. BENNETT then resumed the witness chair.

Mr. Sterling: Mrs. Bennett, as we all recollect, testified at the last session of this matter and we continued it to give an opportunity to Mr. Konigsberg to be represented by counsel—and this is Mr. Mosk, Mrs. Bennett, Mr. Konigsberg's attorney—and to give Mr. Konigsberg's attorney an opportunity to ask you some questions on cross examination. So, Mr. Mosk, you may proceed.

ALICE K. BENNETT, having been previously sworn, testified as follows:

Cross-examination.

By Mr. Mosk:

Q. Mrs. Bennett, I want to direct your attention to certain matters to which you testified at a prior hearing. Of course all I seek to do by these questions is to secure your best recollection on matters to which you have testified. I am sure you realize the seriousness of this matter to [fol. 74] Mr. Konigsberg, and therefore the reason why it is necessary for me to examine you in this manner. Mrs. Bennett, you had prior to the hearing on September 25 before this Committee had testified previously with regard to some of the matters of your membership in the Communist Party, is that correct?

A. In other connections.

Q. And do you remember when it was that you did so testify, approximately?

A. Let's see, it was May, 1952.

Q. And was that the first time that you had testified with regard to these matters?

A. No.

Q. When prior to that time had you testified with regard to these matters?

A. Well, it was the first time I testified.

Q. Had you disclosed the information that you discussed on May 22—That was before the Committee on Un-American Activities, was it not?

A. Yes.

Q. Now, prior to that time you had discussed the same matters with some other committee or group?

A. In general the same matters, not in complete detail.

Q. And who or what was the that group or individual with whom you discussed it?

[fol. 75] A. The Immigration Bureau.

Q. And approximately when was that?

A. I believe that was June, '51, or it might have been later. It might have been September. It was in '51 some time.

Q. You are sure it was in 1951?

A. Yes; that is right.

Q. Now, that was the first time that you had discussed any of these matters, is that correct?

A. Yes.

Q. Now, Mrs. Bennett, you were formerly married to a Mr. Judson, is that correct?

A. Yes.

Q. And you are now married to a Mr. Bennett?

A. Yes.

Q. Is Mr. Bennett a citizen of the United States?

A. Yes, he is.

Q. Has he had any problems with the Immigration Department?

A. No.

Q. Under what circumstances was it that you first had the conversations with the Immigration Department?

A. They sought me out.

Q. And do you remember who it was that sought you out at that time?

A. Frankly I don't think I could tell you his name now. [fol. 76] I don't remember it.

Q. And was that with regard to any particular individual?

A. No.

Q. They sought you out to inquire just generally, is that it?

A. Yes.

Q. Did you at that time mention Mr. Konigsberg's name?

A. I don't believe so, although I would have to see, I would have to see the information I gave before I can state definitely.

Q. Do you have a transcript of the information that you gave at that time?

A. No, I don't.

Q. Do you know anyone who does have a transcript of that?

A. No.

Q. But you do not believe you mentioned his name at that time?

A. To my best recollection I would say no.

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Q. All right now, subsequent to that first hearing before the Immigration Bureau did you have any other hearings before any bodies other than the one on May 22, 1952 before the House Un-American Activities Committee?

[fol. 77] A. No.

Q. So that the three examinations are the only ones you have had? You have told us all?

A. Yes.

Q. Now, I believe you testified, Mrs. Bennett, that you were married to a Mr. Judson, and that he also was a member of the Communist Party at that time?

A. That is right.

Q. Now, when was it that you first became a member of the Communist Party?

A. It was either 1935 or 1936.

Q. And you remained until what date?

A. There wasn't any specific date I could give. It would be in the first half of 1942.

Q. Now, the first group that you were a member of was composed of what type of people?

A. Social workers.

Q. And this was exclusively social workers?

A. Yes.

Q. And you did testify, did you not, that to the best of your knowledge all of the social workers were in special groups for social workers?

A. Yes.

Q. Now, was Mr. Konigsberg ever present at any of those meetings?

A. No.

[fol. 78] Q. Now, during the period of 1940 and 1941 what was your business or occupation?

A. I was a housewife.

Q. And did you have any other activities or belong to any other organizations other than your testimony that you were a member of the Communist Party?

A. I belonged to the Women's Auxiliary of the Newspaper Guild.

Q. Your husband was active in the Newspaper Guild, was he not?

A. Yes.

Q. And that is Mr. Judson?

A. That is right.

Q. And the Newspaper Guild was an active organization at this time, was it not?

A. Yes.

Q. Had frequent meetings?

A. Yes.

Q. And you and your husband attended those meetings, did you not?

A. Not too regularly.

Q. But you did go from time to time to those meetings?

A. Yes.

Q. And these were open and regular meetings of the trade union, were they not?

[fol. 79] A. Yes. I wouldn't say I attended more than two or three open full meetings of the Newspaper Guild, however.

(The reporter then read the last answer.)

Q. Now you say open full meetings, were there smaller committee meetings and other functions of the Guild?

A. I believe there were committee meetings.

Q. And did you attend any of those?

A. Not that I recall.

Q. Were any of those held at your house?

A. Not that I recall. There may have been. My husband served on one committee for a year or so. I don't recall if there were any meetings of that committee at our house or not.

Q. And during this time you with your husband attended various social affairs of the Newspaper Guild and other organizations, did you not?

A. Yes.

Q. And in the course of those affairs you met numerous people that you had seen at the Guild meetings and at other places, did you not?

A. Yes.

Q. Now, you have testified that you met or saw Mr. Konigsberg at certain meetings of the Communist Party.

A. Yes.

[fol. 80] How many times did you see Mr. Konigsberg?

A. Well, it would be very hard to estimate the number

of meetings. We were members of the same unit for less than a year, in fact I don't think it was more than six months, and I can't recollect, now whether the meetings were once a week or once every two weeks, but with the exception of a few meetings that we may have missed, which I don't have a recollection of, we saw each other at the meetings.

Q. And was your husband present at those meetings also?

A. Yes.

Q. And your husband has also testified before the House Un-American Activities Committee?

A. Yes.

Q. Do you know whether he mentioned the presence of Mr. Konigsberg at any of those meetings?

A. No, I don't.

Q. As a matter of fact you know that he did not?

A. No, I don't know that.

Q. You don't know one way or the other?

A. That is right.

Mr. Sterling: You are speaking of Mr. Judson?

Mr. Mosk: That is correct.

Q. By Mr. Mosk? But he was present at the same meetings that you were and would have the same knowledge as to who was present at those meetings.

A. By the Witness: Yes, he would.

Q. Now, do you know what business or profession Mr. Konigsberg was following at the time that you alleged to have seen him at certain meetings?

A. Yes.

Q. And what was that?

A. Social worker.

Q. And you knew this by reason of your knowledge and association with him at that time?

A. No, only that we were told he was a social worker.

Q. "We were told"?

A. That is right.

Q. And who told you?

A. I couldn't tell you. I don't know.

Q. Now, do you know whether or not he was a member

of the or worked for the State Relief Administration during this period of time?

A. No, it was my understanding he was connected in an executive capacity with one of the Jewish agencies. I don't recollect which one.

Q. Do you know whether during any part of this time the person whom you alleged to have been Mr. Konigsberg was ever employed by the State Relief Administration?

[fol. 82] A. I know nothing about his employment.

Q. Well now, you do remember testifying, do you not, Mrs. Bennett, before the House Un-American Activities Committee?

A. Yes.

Q. I will show you a transcript on Page 3,565 of "Communist Activities Among Professional Groups in Los Angeles Area, Part II, Hearing before the Committee on House Un-American Activities", and I will ask you whether or not these questions—you may read this to yourself—were asked by Mr. Tavenner who was questioning you, and whether you gave the answers as they appear here. I will ask you to start reading with the question:

"Mr. Tavenner: Were you acquainted with Mr. Raphael Konigsberg?"

(Witness reading transcript)

Q. By Mr. Mosk: May I have that. (Witness returning transcript) Were you asked these questions, and did you give these answers at that time, Mrs. Bennett?

A. By the Witness: Based on the fact that—

Q. Just a moment. I will read the questions:

"Mr. Tavenner: Were you acquainted with Raphael Konigsberg?"

"Mrs. Bennett: Yes, he was a member of this unit.

"Mr. Tavenner: How was he employed at that time?"

[fol. 83] "Mrs. Bennett: To my recollection he was employed in an executive capacity with a Jewish agency. I am not very sure of that, however.

"Mr. Tavenner: Do you know whether he had at any time been the head of the California State Relief Administration or held any official position in that organization?"

"Mrs. Bennett: I am quite certain that he had not held any such post as that during the years that I was a member of the Party."

Did you give those answers?

A. I couldn't tell you.

Q. Well is that statement true?

A. I don't know.

Q. So that you have no information actually as to whether or not he ever had been a member of the State Relief Administration?

A. No.

Q. It is true, is it not, Mrs. Bennett, the person to whom you were referring had never been a member of the State Relief Administration?

A. I don't know.

Q. And you have no knowledge now as to whether you testified this way at the time of this hearing or not?

A. No.

[fol. 84] Q. Do you deny having made such a statement at the hearing?

A. No.

Q. Now, this group that you alleged that Mr. Konigsberg was a member of, approximately when was it that you first alleged that you met him with relation to such group?

A. I believe it was the late summer or early Fall of 1941; my best recollection.

Q. Now, you are quite sure that he was acting as a social worker at that time?

A. I wouldn't want to swear to that.

Q. But that was your understanding certainly?

A. That is right.

Q. I will call your attention now to Page 3,560 of the same transcript of the hearing before the House Un-American Activities Committee on May 22, 1952 to which I referred before, and I will ask you whether or not you made the statement which appears in the next to the last paragraph on that page. You read that to yourself first, and I will read it into the transcript.

(Witness reading transcript) (Witness returning transcript)

Q. By Mr. Mosk: Now did you make the statement at that time, Mrs. Bennett?

A. That is correct in a way. Actually I presume that any social worker who was a Communist would have been [fol. 85] assigned to social workers units as mentioned earlier, because it was considered necessary they be in protected units."

Did you make such a statement at that time?

A. By the Witness: I presume so.

Q. Was that statement true?

A. Within the limitations of my situation.

Q. So far as you knew that statement was true to the best of your knowledge?

A. Well, it was true in so far as social workers of no particular rank or importance were concerned.

Q. Now, you have indicated that you were at certain meetings at which Mr. Konigsberg was also present, is that correct?

A. Yes.

Q. Now, do you recall anything that Mr. Konigsberg did or the person you alleged to have been Mr. Konigsberg said at any of these meetings?

A. No.

Q. You have no present recollection of any of his participation?

A. No.

Q. Was anything said by any person present at any of these meetings advocating the overthrow of the government by force and violence?

A. I couldn't recollect any specific statements now by [fol. 86] anybody, including myself.

Q. All right, do you recall any statements, to use a word, general term that was said by anyone that was present at any of these meetings, whether Mr. Konigsberg or anyone else?

A. It wasn't necessary that the statements be made. It was implicit in the fact that one was a Communist that one accepted the fact of a forceful overthrow of the government sometime.

Q. Now, I am asking you, Mrs. Bennett, what was said

at any time by the person you alleged to have been Mr. Konigsberg.

A. I don't recollect anything he said at all or anybody else said.

Q. You have no recollection of anything said at any of the meetings you allege that he was present at?

A. No.

Q. Now, have you ever seen Mr. Konigsberg anywhere other than at the meetings that you have alleged that he was present at?

A. Not to my best recollection. I wasn't on personal terms with Mr. Konigsberg. If I saw him at parties I don't recollect it now, but it is quite possible I did.

Q. So it is possible that you saw him at other places also?

[fol. 87] It is possible.

Q. Now, as a matter of fact, Mrs. Bennett, when you came into the room at the time of the hearing on September 25 you didn't really recognize the person whom you identified as being Mr. Konigsberg, isn't that correct?

A. No.

Q. Isn't it true the only reason you identified him as Mr. Konigsberg was because he was the only person present in the room whom you had ever seen before?

A. That is right.

Mr. Mosk: I have no further questions, Mr. Chairman.

Mr. Freston: I have no questions.

The Witness: I would like to make an additional statement.

Mr. Sterling: Surely.

The Witness: In regard to social workers being in closed units, it is true that they were, but if there were social work personnel at quite a high executive level—I couldn't tell you just where that would begin—they might not have been in the group with other social workers.

Mr. Black: I have no further questions.

Mr. Wright: I have no questions.

Mr. Freston: Mr. Chairman, may I ask Mrs. Bennett a question that has no reference to the cross examination?

[fol. 88] Mr. Sterling: Yes.

Mr. Freston: Mrs. Bennett, do you know a Mrs. Bass

who has been identified as, I believe, the Editor of the California Eagle?

A. By the Witness: I have never met her. I have heard the name. I don't recollect having met her. Let's put it that way.

Mr. Freston: I have no further questions.

Mr. Sterling: For my own edification, Mrs. Bennett, I would like to clarify doubts in my mind that were left by the last questions and answers. Do I understand that you do or do not identify the gentleman who is sitting across the table, and who has been represented to you by us as being Raphael Konigsberg as the man who was by that name present at these meetings that you have testified to?

A. By The Witness: That is true, yes.

Mr. Sterling: You do identify his as such?

A. Yes.

Mr. Sterling: I have no further questions.

Mr. Mosk: I have no further questions, Mr. Chairman.

Mr. Sterling: Thank you, Mrs. Bennett, very much for coming in. We appreciate it. I am sorry to have kept you waiting.

(Mrs. Bennett then left the hearing room.)

[Vol. 89] Mr. Mosk: So far as the other matters that we wanted to place on the record, Mr. Chairman, we can proceed in one of two manners. Either I can direct rather general questions, actually it is Mr. Konigsberg's testimony, and he can perhaps just make his statement, and if I feel that there are things that I want to direct his attention to perhaps I can break in if that is satisfactory.

Mr. Sterling: That will be entirely satisfactory. You may proceed, Mr. Konigsberg.

(Mr. Konigsberg then resumed the witness chair.)

RAPHAEL KONIGSBERG, having been previously sworn, testified as follows:

The Witness: I appreciate very much the interest that the Committee displayed in the main point that I was trying to make the last time as illustrated by Mr. Freston's

permission for me to bring in that Army material, and I hope you had a chance to review it. Otherwise I will refer to it briefly.

The point I wanted to make, and I think it is very much in keeping with the discharge of the function of this Committee, and my answer to it, is that, for example, these columns that I wrote for the California Eagle or the organizational activity or public speaking that I was engaged in since I have returned from the war to which reference has been made, all of this is simply my discharge of what I said at that time was my sense of responsibility as a citizen, and I made the point that this I was very closely [fol. 90] indoctrinated with in the Army, and so I would like to introduce with a few words a statement from General Eisenhower which I just happened, since I have been at the meeting, to see in the book of his, from the official Army publication which gave me my orders—

Mr. Mosk: If I may interrupt. May we introduce this as Mr. Konigsberg's exhibit?

The Witness: "Crusade In Europe", a paper bound copy, Page 76 to 78. I will just read two sentences from it, not the whole pages. You will all recall that I mentioned that we felt at that time under General Marshall that the soldier had to be told why he was fighting in order to make him a better soldier. I am quoting now from Page 76 of President Eisenhower's book: "An early deficiency in our war-time Army involved a dismaying lack of comprehension on the part of our soldiers as to fundamental causes of the war. Differences between democracy and totalitarianism were matters of academic rather than personal interest. Soldiers saw no apparent reason why conflict between the two was of any concern to America. No matter what clash of opinion had existed on the point before the war began, a clear, simple and commonly held understanding was now essential among our troops."

And then without reading in detail he explains why the recommendations led up to the establishment of the [fol. 91] orientation program.

Now, "War Department Technical Manual, TM 28-210" I want to refer to, dated July, 1945. These Manuals, I should make clear, and the Mobilization Regulations, were

the official orders which bound us to discharge our responsibilities. I want to refer briefly to Page 22 of this Manual, which incidentally is issued over the signature of General Marshall as Chief of Staff. General Marshall states that one of the things we must indoctrinate the soldier with is "the belief of Jefferson and of Lincoln in the soundness of the majority opinion of the common man when properly informed."

The next quotation I want to make is from the Mobilization Regulations, No. 1-10, again over the signature of General Marshall in which he points out that: "The objects of the off-duty education program are . . . to improve the value of Army personnel as citizens upon return to civil life."

And just one other reference and I will be through. Now, this is the official "Army Talk Orientation Fact Sheet" No. 51, entitled "What This Orientation Deal is All About". If I may interject these sheets were distributed, they were broadcast throughout the Army, and thousands of men got them, and this particular sheet tells what the major objectives of this educational program were, and No. 6 declared that we must build faith in America, and goes on to say: [fol. 92] "Our Army orientation does not attempt to impose on us a blind faith which closes our eyes to faults such as unemployment, poverty, race riots and other unsolved problems."

"Once Germany and Japan are licked, we'll come home to problems aggravated by the war. As citizens we must be prepared to participate in supporting plans for assuring world peace and returning America to peacetime prosperity."

Now, I submit, gentlemen, that these, which of course are very brief quotations from more extended instructions and orders from the War Department is what was the basis for the work I was doing in the Army and I think shows very clearly and proved by reference to these columns that Mr. Preston showed me the last time is in effect what I was doing as a civilian, and while these references don't spell it out in detail, we were told specifically that our job was to teach the soldier that when he came home as a

civilian he would have to perform the same functions in the safeguarding of democratic principles as a civilian as he did as a soldier, using ballots instead of bullets as the analogy was used at the time.

And I would like to now just comment on several of these columns that were referred to by Mr. Freston. I have here clippings that I kept during the period that I was [fol. 93] working with Mrs. Bass, and I think I can say now that the photostats that you showed me apparently are accurate copies. I couldn't then because I didn't know. I didn't come prepared with any of this material, but I have here all the columns that I wrote for Mrs. Bass' paper. There were exactly fifty of them, and I would like to ask the question which can be answered later, of course, the significance of the selection of these twenty-one columns that I was confronted with, because I don't quite see the rhyme or reason for them. I could see a selection based on some haphazard sampling, but it is interesting that these are right in the middle of this period of fifty, all consecutive except for one which is omitted out of the consecutive order, and then of the fourteen columns before the first one submitted to me there are some interesting columns that could have been introduced too bearing on the point which this Committee is interested in, and in the fifteen columns after these twenty-one.

As an illustration I will just refer to them briefly, and the Committee, of course, will go into them later at its pleasure. The column that I am interested in asking why it was omitted because it is right in the middle of these twenty-one, it couldn't have been by accident because the twenty-two are all consecutive, and this one was omitted; the twenty-one columns dating from July 28, 1950 to December 28, 1950, and the column that I want to ask [fol. 94] about is dated August 18, 1950.

Mr. Mosk: I am sure you have a right to ask the Committee questions. You might just refer to the column and indicate what your observations were with relation to that column.

The Witness: I am trying to simply say that this raises a question in my mind as to why this was omitted, because I don't question the Committee's rights like anything they

want to ask me about, but since the others were all consecutive I would like to know why this one was omitted. I think it has significance because it bears on the issues particularly with respect to the points involved in the Grunsky Act.

This particular column I called "THE ANNIVERSARY" and it was simply some comments on the anniversary of the end of World War II, and in this column I quote from some of these other orientation fact sheets where the War Department gave us definitions of Fascism, which is a concept I frequently referred to in these twenty-one columns, which is why I am raising the point now; and reference to the column will show that the concept as I describe it in these columns is almost word for word that used by the War Department in its educational program with the soldiers. Now, the—

Mr. Sterling: How is it stated?

The Witness: I would be glad to read it.

[fol. 95] Mr. Sterling: Not the whole thing.

The Witness: Just one sentence: "Fascism is the precise opposite of democracy. Fascism is government by the few and for the few. Fascism came to power in Germany, Italy and Japan supported in secret by powerful financial and military interests." Then I will skip a few lines. "Any Fascist attempt to gain power in America would work under the guise of super-patriotism and super-Americanism. Indiscriminate pinning of the label 'Red' on people and proposals which one opposes is a favorite trick of native as well as foreign Fascists." That is a direct quote from the Army.

Mr. Sterling: That is all a quote from the Army?

The Witness: Yes, I have it here in italics.

Mr. Sterling: From the Orientation Facts?

The Witness: That is right. Now, the other two columns. Of course it would be any of the other twenty-five or twenty-six that we could refer to, but since it was my understanding, and I think it is correct that one of the things that the Committee is interested in learning is whether any applicant has ever advocated overthrow of the government by force and violence. It just happens two columns of the fifty that deal specifically with that point, the one I entitled "Force and Violence" on May 22, 1950, and—

[fol. 96] Mr. Mosk: This is one column that was not in the group that the Committee had last time?

The Witness: That is right. That is why I am simply asking of this is what the Committee was interested in learning I think that is a column I could have been questioned about, in which I certainly criticized very severely the whole notion of force and violence or its use. The reverse of that is in the column of February 2, 1951, which is called "Time for Courage" in which I lay out an action program for citizens. I have been talking in the previous columns about what some of the problems were, and in the last column, because I think one should do more than theorize. I laid out an action program for what a citizen can do about it, such as reference to it will show this is what I was recommending: "Talking to your neighbors; writing letters to the President; writing letters to your Congressmen; organizing committees, making a contribution, if necessary. . . ." and so on. My point is this gentlemen: If I was advocating force and violence it would be in such a column or in such a program.

I think without belaboring the point any further there is simply not a word in any of the twenty-one or the fifty columns. I will be glad to submit all fifty for inspection. In any of the statements that were previously referred to by Mr. Freston, such as this statement to Mr. Tenny's Committee, or any records there may be in the newspapers [fol. 97] or any speeches that I may have made at no instance have I ever suggested that concept, and I will state categorically--I did it last time--at no time have I urged it, believed it, or would I do so.

Mr. Mosk: You had another column that was written while you were in the Army and then was reprinted elsewhere, which is somewhat of a declaration of your principles, is that correct?

The Witness: Yes, I was just going to refer to that briefly next. You see I think you have me at an advantage here, and I am glad of that. I am on record as to what I have thought and have said. Many persons that you could call in for investigation you would have no idea what he thought because he never said anything of which too many people have never done anything in discharging their citizenship responsibilities, but I have for many years put

myself on record. If I were a person engaged in conspiracy that would be the last thing I would be doing, publicly putting myself on record.

And here I have a brief statement that was written originally for the Army Orientation Program. We were given an assignment at the Army Staff School at Washington and Lee University—I referred to it at the last time—to write "Why Are You in This Fight", a personal statement of your beliefs. Now I just happened to send a copy to my wife, and she sent it to this magazine. I didn't personally [fol. 98] send it. I would like to submit this. Though written ten years ago it is a statement that I can subscribe to at this moment as a statement of what I believe in. May I just quote from it?

"Every person in uniform asks himself at some time: Why am I in this fight? What is my stake as an individual in this total war? And sooner or later each one of us must give himself an answer.

"It is not enough to say: 'Hell, I was drafted,' or even, 'I enlisted.' While it may be that the soldier who enlisted has a clearer, more positive reason for being in the Army, nevertheless the draftee can also find deeply personal and satisfying reasons for being in uniform—if he understands that in a democracy it is the people (of whom he is one) who draft themselves to serve their country in its hour of peril.

"In answering this question for myself, I find that the simplest, most accurate reply is: I am in the army because I am selfish.

"I want and need certain things which I know I will never have unless the United Nations win this war; things which I know I could never enjoy unless I did my share in securing them for my side.

"I want economic security for my family and myself. A minimum of economic security is the basis of everything else: hungry, desperate men cannot be good parents, good [fol. 99] neighbors or good citizens; they cannot enjoy life or contribute to it.

"I want also to feel free to follow certain professional and cultural interests. I know that if Fascism wins, all this will be impossible. So I must help defeat Fascism. I know I cannot do this alone.

"I want to live like a man, not like a slave; to live in dignity while striving for the realization of the promises of manhood and civilization. I cannot expect others to fight and die for this liberty and hand it to me.

"I want the United States of America to be a mighty democratic nation. Only such a land can guarantee to me and mine the things we hold indispensable to a useful, honorable life. I am a Jew.

"I know that democracy can be lost, and how it can be lost. I have learned that if Fascism comes here I myself will be to blame—if I have not done everything in my power to prevent it. If I do the best I can now, I will not have to reproach myself later, win or lose. I feel personally responsible for my country's fate. I want to help shape America's future."

Now, there are several other paragraphs. I think that is sufficient to indicate what I mean.

And in concluding this part of the presentation I would like to just make reference to an editorial in the American [Vol. 100] Bar Association Journal of December, 1952, Page 1028: "Constitutions don't uphold and defend themselves. An essential for constitutional rights is a staunch people who revere freedom and whose watch over the ramparts is ceaseless."

I think the gentlemen of this Committee will appreciate the very simple point I am trying to make, that all these activities which I admit to, which I am proud of, are activities I carried on in discharging what I considered to be my citizenship responsibilities. You may disagree. You may feel citizens should carry out their duties otherwise. I challenge anyone to point to anything I said or have done that suggests my moral unfitness.

I can't help but refer to a statement made by William Howard Taft which I came across. I hope the Committee doesn't think I spent weeks of research. I came across the statement in his book "Ethics in Service". He refers to the legal profession. The title of the book is "Ethics in Service", Page 13: "The legal profession had its beginnings in the struggle for individual rights. Most of the progress toward individual liberty in English history was made through the successful struggle of the lawyers against the assertion of the divine rights of kings and through the de-

defensive privilege of members of our profession. Fidelity to his oath requires that the lawyer be a genuine force against oppression and that he strive valiantly to make the law an [fol. 101] instrument of right and justice, his skill and devotion on behalf of the individual profound as it affects the welfare of society."

Now perhaps I will be immodest and suggest it, but here again you have me at an advantage. I think my record shows I could be that kind of a lawyer, whereas in contract—this is no reflection on the other applicants since they are are so young, most of them, and they have not done anything; they have not had a chance to do anything—you couldn't begin to know, and from your experiences with them, at least my experience with them during my three years in law school, you wouldn't know how to determine how good a lawyer they would be. Here you have a chance to determine on the basis of a man's record of many years standing, and I submit that the record shows that because I have this, call it what you will, this streak of principle I would perform in the functions in the manners suggested by the outstanding members of the Bar.

Now, I haven't up to this point discussed in detail or even commented on the specific columns that were referred to by Mr. Freston. I think they bear comment if only to show this point, that during the same period I was making these comments in the columns in the California Eagle other American citizens were taking similar comments, other Justices, which say in effect what I say in these columns, [fol. 102] column by column, while in some of the instances sometimes they were not said until sometime later, some in recent months. I could be considered as saying them prematurely.

And so if the Committee wishes, and I think it would be worth-while unless my counsel thinks otherwise, we could refer to some of this material which simply bears out the point I was expressing, and I don't want to claim credit for any original ideas, but these ideas—apparently there is no other explanation—if they were brought in here they were brought in to show they bear on the question of my fitness and no doubt unfavorably in the opinion of the Committee. It can be demonstrated—the basic idea in each of the col-

umns—that statements very similar or the same have been made by responsible citizens throughout the community, throughout the country, whose principles are looked up to.

Mr. Mock: What you have prepared, as I understand it, is that you have gone through the columns to which the Committee referred last time, and have shown with relation to these columns that other persons were either at that time or before or since have taken positions basically similar, and persons who are either in high positions in government today or are well respected in one manner or another. Now, I don't know what the Committee's wishes are. Mr. Konigsberg is prepared, I think, on all of the columns, or he can pick out a few by way of example, whichever way the Committee prefers that he be—

The Witness: I don't think it would be necessary to prove the point. It would take a lot of time to go through every single column. I selected eight out of the twenty-one most significant bearing on the general question of my fitness, which are the most significant out of the twenty-one, which make the point I was just making, to show that I was not a voice in the wilderness and no radical voice on the mountain top shouting these things.

For example, the Vice-President of Ford Motor Corporation; Ernest Weir, President of the International Steel Corporation; Justice Jackson of the Supreme Court; President Eisenhower today himself saying these things. Perhaps if Mr. Preston or the Committee could enlighten me what significance they attach to these views I could be better prepared to answer them. I assume obviously the only reason they were brought in here for was to bear on the question of proving my fitness. Frankly, gentlemen, if actions such as I have been engaged in renders a person unfit to be a lawyer, woe betide not only the legal profession but every other profession in our country. I hope the Committee is not suggesting that an active citizen cannot be a good lawyer. I am sure the Committee feels the other way [fol. 104] around, that the lawyers should be active citizens.

Mr. Sterling: Would it be possible, Mr. Konigsberg, for you to read into the record the citations of these quotations from prominent people that are to the same general effect as your editorials.

The Witness: If you would like me to do that.

Mr. Sterling: Not reading the entire text, so anyone reading the record could refer to them.

The Witness: Can I do this? Unless you insist, I can take all twenty-one. I think just these eight would answer the question. Of the eight I could read one brief one for each one rather than the half dozen I have for each. I think perhaps that would meet the problem.

Mr. Preston: Yes.

The Witness: I would take them in about the order they were in the presentation to me. This first column that the Committee presented to me was called "The Greater Loyalty" written 7/28/40, in which I make the simple point that the loyalty of an American citizen should be tested by his loyalty to the basic principles of our Constitution and not his adherence to the current program of the present administration, whatever period of history that might be. Now I don't think there can be too much argument of that point, and we find, for example, in this book, "The Loyalty of Free Men" written by Allen Barth, who is a prominent [for 1945] newspaperman, Pages 3 to 7, I won't even read it, but I can refer you to it, in which he makes the very point.

Mr. Mosk: It is a regular Cardinal twenty-five cent publication, sold on all newspaper stands.

The Witness: As a matter of fact I first read it at the Law School Library in a bound copy. The page number refers to the paper bound copy, and just the one.

Mr. Mosk: May I interrupt? I note the book has a foreword by Zachary Chaffe of Harvard Law School.

The Witness: The one quotation I want to offer in connection with it comes from the former Librarian of Congress, Archibald MacLeish in which he says: "Patriotism which measures itself not by its love of America but by cold passion against the Soviet Union is an evil thing that will disastrously divide the United States. A man who lives not by what he loves but by what he hates is a sick man, and so too for a nation." This man is now Professor at Harvard University, and this was spoken November, 1952, this last month, at the Annual Meeting of the B'nai B'rith Anti-Defamation League.

There are a lot more on that point. I won't give it to you now. On the next column which dealt with the subject.

"What is Wrong with Peace?", written August 25, 1950, and here I will simply refer to quotations without reading them, except one brief one.

[fol. 106] Twenty-one of Boston's leading bankers and industrialists called the Dover Group on December 1, 1950, which was just a little while after I wrote this, stated the same thing, that is they urged, and this was an official declaration of a group in Boston, they urged the withdrawal of United Nations troops in Korea, withdrawal of the U. S. Seventh Fleet from Formosa, and the seating of the Chinese delegation in the United Nations; and statements from Herbert Hoover and Joseph Kennedy in the Wall Street Journal urging the same program.

Mr. Sterling: What date?

The Witness: 12-27-50, December 27, 1950, and I think you are familiar with the very last statement that President Roosevelt made in the Jefferson Day address within the day before he died: "The work, my friends, is peace. More than an end of this war—an end to the beginning of all wars, yes, and an end forever to this impractical, unrealistic settlement of the differences between governments by the mass killing of peoples."

And, as you can see there are quite a number of others which I won't take the Committee's time for. One you can refer to is the resolution by Edward Johnson of Colorado introduced into the Senate on May 23, 1951, for ending the war in Korea.

The third is a rather interesting one called, "We Are The Experts", in which I make the simple point that ordinary [fol. 107] citizens have got to take a responsible part in government and don't have to be like expert economists because the basis of democracy is the mass judgement of people, and it is rather interesting that when General William F. Dean was released from thirty-eight months of Communist captivity in Korea, the first interview he gave, of which I have a copy here from the Los Angeles Examiner, which quotes a statement from the City of Washington, October 22, in which it states: "Major General William F. Dean declared today that United States' parents should do a better job of teaching their sons what it means to be an American. He asserted that G. I.'s captured by the Reds in Korea would have been better able to resist

Communist brain-washing if they received home training in the responsibilities of American citizenship. The General told a news conference that too often youths are inducted into the Armed Services with only a vague awareness of their duty to their country."

It is just the point I have been making all along. The next day President Eisenhower at his news conference, commenting on this as well as similar reports the President told his news conference, "Americans sometimes get only meager education in their obligations to a free form of government," which is, of course, the point I was making basically in all these columns. In other words, I should say the gap in my own small way I was trying to fill.

[fol. 108] This next one that Mr. Freston, I think, had culled, called "The Gangsters, Incorporated," dated November 5, 1950, and this is from Justice Jackson of the Supreme Court of the United States, a statement made at the Nuremberg Trials November 21, 1945: "The common sense of mankind demands that law shall not stop with the punishment of petty crimes by little people. It must also reach men who possess themselves of great power and make deliberate and concerted use of it to set in motion evils which leave no home in the world untouched." And again many others, but I won't refer to them.

The fifth one called "Truth Will Rise" written December 7, 1950, in which I make the point very simply that the program we were following, that is our country was following, overseas was not in the best interests of our country or the people overseas, and here is a statement that was in the Wall Street Journal 12-6/50. It warned that "The country faces national ruin if it doesn't recognize its foreign policy mistake." It called for "appeasing China" as the least disastrous of possible alternatives and for treating United States allies henceforth as true partners rather than bought followers, which incidentally is what Secretary Dulles just said the other day in contradicting Mr. McCarthy, that is the way they are going to treat their allies.

[fol. 109] Mr. Mosk: May I interrupt you a moment? You have now gone through five. ² Actually, you have gone through all of them. I think that the point is probably made before the Committee that he would be able to go through each of the additional articles and establish that other per-

sons of various stature of life were saying the same things in similar or in some cases identical manner; and if the Committee wishes we can go on or can submit separately or if you have specific questions as to other columns, but I think that perhaps the point has been made for the record affirmatively on these matters. Were there any other specific matters in relation to this?

The Witness: No.

Mr. Mosk: Let me say this if I might: As I indicated at the beginning in discussing this matter with Mr. Konigsberg we felt that there were three phases of the matter that we wished to bring before the Committee. One was to complete such cross examination as has been completed with relation to the one witness. Secondly, to indicate as best it is possible without any formal pleadings, not knowing specifically what matters to respond to, Mr. Konigsberg has now, I think, indicated something of his general approach, and I should like at least to submit, I think, if you are making a record on this, at least the article here, I think, should be submitted as something of a statement of principles of [fol. 110] Mr. Konigsberg as an exhibit.

The Witness: That is the only copy I have.

Mr. Mosk: It can be withdrawn at a subsequent time.

Mr. Sterling: Do you wish to take it at this time and photostat it and put in the photostat?

The Witness: If you wish.

Mr. Mosk: The other phase of our approach to this matter is the matter of calling additional witnesses. Now, Mr. Konigsberg is in a peculiarly good position, as he had indicated, far better than I could possibly state, because of his age and because of his experience and his background, his work record, he is in a position to call upon persons who have had contact with him throughout his career to attest to his moral character. We can and are prepared to present that in one of two manners. I felt it would be an imposition perhaps to bring witnesses down today. I didn't know how long the Committee wished to take, but we have two methods, and we would submit to either method, but we do feel that we want to submit affirmative statements of persons in various walks of life, and we are prepared to bring anywhere from ten to twenty persons who have known Mr. Konigsberg in varying times in his career and have had a

chance to observe him under the stress of those things which he has actually done affirmatively and to attest to his [fol. 111] character. Now, we can either bring five, ten, probably twenty witnesses that would be willing to come down, and these would all be persons of stature that would be recognized, we feel, by this Committee, or if the Committee prefers we can get such statements in writing and submit them, and we bow to whichever method the Committee prefers to take this testimony, but we feel that it is most relevant, and in this case we have the fortunate circumstances that we have a man with a work and a community existence of such length of time that no new admittee to the Bar would ordinarily be able to present, and we feel that this is significant and must be considered by the Committee.

Mr. Sterling: Mr. Mosk, it occurs to me that the objective that you seek can be accomplished perhaps without taking an undue amount of your time or Mr. Konigsberg's time or the time of the Committee by our allowing Mr. Konigsberg to have people file with this record letters in which they express their opinions.

Mr. Mosk: We have no objection. Time is also a problem with me, of course. We have no objection. We would like to have a reasonable time in which to do that.

Mr. Sterling: You may do that and have any reasonable time. Is thirty days sufficient?

Mr. Mosk: That is quite sufficient.

Mr. Sterling: Perhaps I am overly direct in my approach [fol. 112] to this matter, and perhaps I have forgotten exactly all that was said at the last hearing. I think we stated our position the last time that we are interested in knowing whether or not Mr. Konigsberg has any present affiliations with the Communist party and whether or not he had any affiliations in the past; if he did have those affiliations whether they still continued in any respect. Perhaps you can refresh my recollection. I didn't re-read the transcript before this hearing because I didn't have time, and Mr. Freston was particularly assigned to it. As I recall it—I have just come to it now—Mr. Konigsberg takes the position that he does not want to answer the question as to present membership in the party or any past membership in the party.

The Witness: May I explain it? I didn't say I didn't

want to: I answered it in the way I felt I could answer it, basing my answer on the guarantees of the First Amendment. I think I pointed out too that I felt regardless of what the answer was, whether I answered yes or no to the question, that the basic principle permits a citizen to remain silent if he wishes, or to comment if he wishes, and that invasion of one's opinion, one's thoughts, one's religious beliefs, is a principle that is basic to the whole problem we are faced with in this country, the whole problem of the attack on the basic civil liberties of our period, and I feel [fol. 113] that the position I am taking in giving this answer stands with or places me with so many other citizens, many fine citizens, who feel they must take this position as their part in defending our liberties against attack. Now, you may disagree that this is an invasion. You may disagree it is an attack. Again I cite from many authorities. I don't think I need to cite to the Committee the Constitution, the First Amendment. If you permit me one, Justice Jackson in the case of *Thomas vs. Collins* in which he says: "The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech and religion." The citation of that is 323 U. S., 516, 545.

Now, I don't think the Committee wishes me to labor that point, though I think I have an adequate legal basis for that position I am taking, and I referred the Committee previously to a comparable historical period in our history, the Alien and Sedition Laws, in which, all of which that is, our American history shows that it is a very grave and a very solemn duty of a person who believes in these principles to defend them, to use them and not to give way.

And one of the other quotations I have shows that there is nothing in our constitutional history that says in periods of stress must you give up these rights. Particularly in periods of stress you should not give up these rights. [fol. 114] I know the members of this Committee are far more familiar with this than I. I am familiar with the environment and the circumstances this Committee has to operate under. I am aware of what are my duties as a citizen.

Mr. Freston: Mr. Chairman, so that we will have some semblance of order in this record, even though we do things

in an informal way, I observed in looking through the file we didn't mark any of these documents. We merely referred to them with a general description. It might be well to mark these exhibits. And parenthetically may I state that you will recall, and undoubtedly Mr. Mosk, you have read the record and observed that on Page 6 the inquiry developed that Mr. Konigsberg had worked for a friend of his, Mrs. Bass, for as he stated about three or four months, perhaps a little over three months, and the copies furnished to the Committee ran from July to December in 1950. And he stated also that he did not recall whether he wrote a column every week. Now, in the copies furnished to the Committee apparently one was omitted during that period. We would suggest that you furnish that copy to the Committee, and it was my understanding from your answers, Mr. Konigsberg, that this was work prior to the time that you became busily engaged in law school, and I didn't realize that you apparently wrote columns after December 28. If that is—

[fol. 115] The Witness: Yes, up until April, '51.

Mr. Freston: Then I would also suggest that you also supplement the record with those items so that the record that we have heretofore identified as twenty-one photostats be made complete to cover the entire fifty articles, is that right, I believe you said—

The Witness: I have no objection. I was thinking off-hand of the expense.

Mr. Mosk: Can we turn them over to the Committee for photostating, and then have the originals back?

The Witness: I haven't been employed for four years. My wife has been supporting the family.

Mr. Freston: That can be taken care of. It might be well, Mr. Chairman, if the exhibit which will consist, as I understand, of the fifty editorial pages of the California Eagle might be marked as an exhibit, and I suggest you assign a number to it so the reporter can indicate it so it can be identified.

Mr. Sterling: That will be the Committee's Exhibit 1.

Mr. Freston: I believe the same would apply to the so-called Tenney Committee exhibit which we discussed last time. I assume that would be 2.

The Witness: I don't have a copy of that. Were you asking if I had a copy?

[fol. 116] Mr. Freston: No, just so we have a mark on it so we can identify it.

Mr. Mosk: Will these exhibits be available?

Mr. Sterling: Surely.

Mr. Freston: And the next number would be the statement of Mr. Konigsberg before the Tenney Committee September 7, 1948. I assume that would be No. 2.

Mr. Sterling: Yes, that will be No. 3.

Mr. Freston: Some of these editorials were enlarged. They are not very legible.

Mr. Mosk: Are they duplicates?

Mr. Freston: These were the ones Mr. Konigsberg was referring to.

The Witness: I just remembered the one about "THE GANGSTERS, INCORPORATED".

Mr. Freston: Well there are eight. Apparently those are the eight that were referred to. Frankly these are easier to read because they are enlarged. I assume it would be proper to have them as part of Exhibit 1.

Mr. Mosk: No objection.

Mr. Freston: It might also be well, Mr. Konigsberg, to introduce as your exhibits those documents to which you referred, because I would doubt seriously if the Committee would have access to these War Department bulletins. It might be well to introduce those, and anything else [fol. 117] that you would like to submit to the Committee that is not a matter of public record.

Mr. Mosk: We will introduce then as Applicant's Exhibit 1 the War Department Technical Manual dated July, 1941 TM 28-210, and I think that a specific reference is made in the record to the page in this.

And then as Applicant's Exhibit 2 a War Department Mobilization Regulations No. 1-10, entitled "Morals", and dated, Washington, March 5, 1943, and again I think the particular portions referred to by Mr. Konigsberg in the direct testimony.

And as Applicant's Exhibit 3 a document, four pages, entitled "Army Talk Orientation Fact Sheet" No. 51, dated December 32, 1944, and there seems to be some underlying

here which is probably the references Mr. Konigsberg made in his testimony.

Where I have used Applicant's 1 make it Applicant's A, and Applicant's 2 will become Applicant's B, and Applicant's 3 will become Applicant's C.

Mr. Wright: It is to avoid confusion?

Mr. Mosk: Yes. The fourth exhibit, I think I perhaps submitted that before. Applicant's D is a copy of "National Jewish Monthly" dated July-August, 1944, with particular and only reference to Page 359.

Now, well then, if we may, Mr. Chairman, perhaps the easiest way to handle other references would be to submit [fol. 118] a memorandum referring specifically to representative clippings and articles in such a manner that the Committee may refer to it specifically if it wishes.

Mr. Sterling: That would be satisfactory.

Mr. Mosk: Now, as to these articles here, the fifty articles, we will leave them with the Committee now and such ones as the Committee wishes to photostat—

Mr. Sterling: Yes. It is my understanding that we will photostat those copies of which we do not now have and return the entire fifty to Mr. Konigsberg.

Mr. Mosk: Now, the first four which I have, A, B, C, and D are the only copies that Mr. Konigsberg has. If we may state on the record that if at some time he has a specific need for them he may withdraw them by substituting in some manner or other a copy.

Mr. Sterling: Yes, indeed.

Mr. Mosk: I think those are the only specific exhibits at this time, although we may make memorandum references to some of the others, and we will within thirty days submit character references by letter, and if I may say on the record now any of the letters that are submitted to the best of my knowledge now I think that all of the people themselves would be available for individual interrogation to expand or question any of the statements that they might make on Mr. Konigsberg, and we are prepared to bring them here as witnesses to the extent we can do it. [fol. 119] They are all busy people, but for the convenience of the Committee we will submit it by letter, and finally if the Committee feels that there is a need at the

conclusion of submissions I should like an opportunity to address the Committee with regard to the facts that have been presented.

Mr. Freston: May I ask a question of counsel?

Mr. Sterling: Yes.

Mr. Freston: One of the things that was bothering me, Mr. Mosk, is the general answer we have received to the question concerning present and past Communist affiliation, and I recognize the objection that counsel raises under the First Amendment.

Mr. Mosk: The witness.

Mr. Freston: The witness has raised. The thing that troubles me is we have an affirmative duty under the statute to certify as to this applicant's good moral character. We have endeavored to point out to him that the burden of showing that character is upon him. It appeared to me that he wasn't being quite forthright with us in not giving us an answer to those questions. He stated in effect his reason, at least as I understood it, that he did not want to answer the questions because he might sometime be accused of or prosecuted for perjury. Now, that is the rationale as I remember it, and frankly I am left in a rather confused state. As a member of this Committee I [fol. 120] have to take an affirmative act of certification as to a good moral character. I wonder if you could perhaps enlighten me or help clarify the situation so perhaps maybe I might understand it better.

Mr. Black: May I interpose another question directed to the same point, and you can answer them at one and the same time. Just to make sure that I understand the witness' position, at the last hearing—Mr. Konigsberg's position—as I understood he was perfectly willing to deny categorically he is a Communist and took that position, am I right on that?

The Witness: I said philosophical Communist.

Mr. Black: It seems to me that question we wouldn't have a right to ask you under your argument, but that we would very definitely have a right to ask you whether you are now a member of the Communist party as it is commonly understood. Now, am I right on that that you still take the position that there is no objection to your answer-

ing us categorically that you are not now a Communist, namely that you don't believe in the philosophical doctrines of communism, generally speaking, that is a matter of belief?

The Witness: I think I understand your question.

Mr. Black: But you do take the position that we do not have the right or you have no obligation to answer the question, "Are you now a member of the Communist [fol. 121] party?" and that you refuse to answer. I am not trying to argue. I just want to be sure I understand your position. Am I correct in that?

Mr. Mosk: Either way. The first question was addressed to me. I understand both questions, and I think in this line of hearing there may be some question whether counsel's comments are necessarily the comments of the applicant, so that I think that Mr. Konigsberg could well reserve the right to disagree with counsel in this field, however I feel as counsel I have an obligation to indicate in response to the question—which I think is a fair question—I think that, gentlemen, what we are faced with here, and some of the things that I would say now are probably things I would want to say by way of summation but I have not prepared any summation, but I have my feelings on the situation, it seems to me that what we are faced with here is a matter of a question of personal fitness, and that is why in the statements that Mr. Konigsberg has made and the submissions which we intend to make within the next thirty days we are endeavoring to address ourselves to that issue which we feel most pertinent that is "What has Mr. Konigsberg done as an individual with relation to the people with whom he has dealt, the occupations and professions that he has followed, what has he done to show affirmatively that he is of good moral character and would be a good member of the Bar?"

[fol. 122] Now, as I understood Mr. Konigsberg's position it is his feeling that one of the matters of principle on which he has always stood is the principle that one may not inquire as to a person's belief, religious, political or otherwise, and that by answering such questions as they are being asked throughout the country in these days, and in all sorts of places and under all sorts of circumstances, as

I understand Mr. Konigsberg's position that by answering such a question he is in effect giving way to and giving ground on the principle that one may not be asked these things, and that by his failure to answer he is neither affirming nor denying.

Now as to the second question, which I think is most pertinent and certainly struck me at the moment when I read through the transcript for the first time, I was struck by exactly that same question, and I asked Mr. Konigsberg about it, and I think that perhaps he should answer this himself, but we did discuss this very matter, and I know that his position is now that if you were to ask the same question today he feels that it is a question he should not have answered, and that by way of principle in coming unprepared he did not think through the principle to that extent. I think I am answering correctly.

The Witness: That is exactly what I told counsel. As you are aware I came in without counsel, without any preparation, without knowing exactly what I might be [fol. 123] asked. I did have an indication since I had informed the Committee, I appeared before the Tenney Committee, that I might be asked about that. I came prepared with nothing. In the heat or in the tension of a meeting of this kind, as you are aware, very often one will say things that one regrets later or would have said later. If I were asked that today I think my answer would be the same as to the other question as to whether I am or am not a member of the Communist party, or whether I ever was.

Mr. Black: I might say without expressing my own view on the thing that I think it must be obvious to you at least under popular conception there is a distinction between what a man believes in a doctrinaire's sense, which I think everybody agrees who at least tries to follow American principles is sacred ground as to his individual concepts. The belief of the doctrines on the one side, and at least in popular view, affiliation with a party that has its policies dominated by the Soviet Union is quite a different conception, and that the argument at least is that inquiry goes to to the very essence of a man's loyalty to the country and has nothing to do with his individual beliefs in the matter of religion or political philosophy or a code of ethics, and that is the distinction that we are trying to get at here.

The Witness: I think you are quite right, and the position [fol. 124] you take is quite correct, and I confess that I was in error at the time again due to the tension of the moment, and as I was going to say I don't think Mr. Preston's recollection is correct. I did not say that I was giving the kind of answer, was giving or refusing to answer because I was afraid of a perjury charge, as I recall. That is not the basis of refusal or the type of answer I have given. The reason that perjury discussion came up, as I recall now—I haven't been thinking about it—was in connection with the nature of the hearing where a person does not have the opportunity to cross examine and confront witnesses or see documents or things of that nature, and it so happens in the case of Owen Lattimore, who faced a perjury charge, even though he denied a half dozen ways any association with subversive elements—I am recalling from memory—it had to do with whether he expressed a certain opinion. How is a man to remember what opinions he expressed. His appeal is pending at the moment for his conviction of perjury. It is only with reference to that situation that I mentioned or commented upon the element of perjury, because that has nothing to do with the basis for my giving the kind of answer I am giving to the question as to my political affiliation, none whatsoever. You correct me on the record if I am wrong. That is my recollection of that discussion. At least I would like to say for the record that has nothing to [fol. 125] do with the type of answer I have given.

Mr. Wright: I would like to ask a question that perhaps in some stage of this proceeding you might enlighten at least this member of the Committee on, whether you consider inquiry into present membership in the Communist party as at all relevant in the inquiries of this Committee as to moral character? In other words, is it a relevant factor? Does it have any bearing? Is it a proper scope of inquiry?

Mr. Mosk: I think you have to draw this distinction. It may be under some circumstances the Committee would feel that it would be a type of information that it would like to have to reach its conclusion, and to that extent perhaps it may be considered relevant, but many relevant matters are not inquired into in legal proceedings because for other

reasons those matters are not competent testimony. And it is the position of Mr. Konigsberg here that inquiries into the realm of his political, religious or other beliefs are matters that are protected under the First Amendment to the Constitution, and therefore while it may be information which the Committee would feel it would like to have it is a field in which the Committee may not inquire by Mr. Konigsberg's position, and I think therefore perhaps I am answering your question yes and no, but I think I make my point clear as to what position Mr. Konigsberg takes.

[fol. 126] Mr. Wright: Having felt that we would like the information and being denied, now I won't argue with you that being denied that we have no way of compelling it, but are we therefore faced with going forward?

Mr. Mosk: I think that also is a fair question, and that is why we are approaching the hearing in the manner in which we do. The Committee has before it expressions of principle which it would not ordinarily have in the ordinary application for admission. The usual twenty-one or twenty-two or twenty-three year old student has nothing on the record, unless perhaps he happened to write while he was in college, but we are dealing in this situation with a mature man who has already lived almost several lives. He has had a life in the Army in which the United States Army saw fit to commission him as an officer and to give him the most responsible of positions in the orientation program; he has had a life as a social worker in which he has performed in various functions; and then only after these things did he become determined that he wanted to take up law, and break that off and go to law school.

Now, it seems to me that what we have to deal with is not to in this proceeding endeavor to determine what some particular political party or philosophy believes, but to look to the personal actions of the applicant himself and it is to this that we are directing ourselves, and, well I have [fol. 127] already talked personally to determine before I came to this Committee whether I would be able to do what I say that I am offering to do, and that is to bring responsible, reputable citizens of this community as witnesses to his good moral character and his actions, the things that he did when he was in other positions, which are a basis for

determining what he will do when he is a lawyer. And as I say, I could, I know, bring responsible social workers, other lawyers, persons at the universities with whom he has dealt, all of whom are prepared to come and say that they have known him in these various capacities, and that on the basis of the things that he has done himself, not what someone else has done, but what he, Raphael Konigsberg, has done that he is of good moral character to become a member of the legal profession, and these are things that as I say we will submit affirmatively, and it seems to me that this is the affirmative answer to what I can well understand the Committee feels is a void which Mr. Konigsberg, for reasons of principles he does not feel he wants to fill, but I think that even there one must always have respect for people who at recognizing the danger to him in standing on his principle is still prepared to do that in order to carry out things that he believes in so firmly.

Mr. Wright: I commend his moral principle, let me say, but perhaps have a little doubt for his judgment.

[fol. 128] Mr. Mosk: If I may comment on that also I think that certainly—

Mr. Wright: He is making it extremely hard for the Committee.

Mr. Mosk: I understand that, and I discussed it in great detail, because obviously I recognized that. Let me say one additional word, because I think that it is relevant to this point, that is with relation to the columns. I have not read through fifty columns, I assure you, but I did scan the ones I understood the Committee had referred to, and it seems to me that what we have to recognize is not that we disagree or agree with particular things that are said here, but I think that the testimony Mr. Konigsberg has given has shown that these principles which he is exhibiting, and which the Committee at this point at least would appear to disagree with as to his judgment in asserting these principles have been things that he has lived by, and I think that this is the significant thing that we must find in examining this entire record.

The Witness: May I just make this comment as an extension of the remarks that have just been made and very much in line with the question. If I were to come up now

for the first time when so crucial a matter as following my professional career is concerned, and the Committee would question as to whether this was a sincere position, as has [fol. 129] been suggested by the record and all can be verified a thousand times, this is something I have been doing all my life.

As Mr. Mosk was speaking I found I have here a statement which refers to a previous situation very similar to the nature in which I find myself now. You may remember in 1928 Culbert Olson was elected as Governor on the democratic ticket. For many years I had been employed to develop the program of the State Relief Administration. At that time because the democrats had been in the wilderness many years and needed jobs for their faithful workers, jobs were sought by Mr. Olson and his cohorts in many divisions of the State government. Unfortunately most of the individuals, as you remember, were covered by Civil Service. The State Relief Administration was a new service so he could find a lot of jobs for his ward healers, if you will pardon the crude expression, but those were the facts. There I was Director of the State Relief Administration for one district. The County of Los Angeles was divided into sixteen districts. And Mr. Olson decided that a good way to make jobs for his friends, which meant he had to get rid of us social workers because he couldn't hire two people for the same job—but I understood it was done in some circles—he would get us out on our own principles. This is rather interesting. You see social workers, as other [fol. 130] professional groups, have evaluation scales drawn up by men and women experts in this judging a social worker on the basis of concepts. They drew the scales and there were such questions—you won't believe it—"Was this person faithful to the Olson administration" which hadn't been in office but a few months. Several social workers and myself opposed this on strictly a professional basis. Finally some ninety-eight of us got together protesting. We weren't concerned whether he found jobs for his faithful or not if they dismissed us on a professional level, not whether we were faithful to the Olson administration. That was the reason we were dismissed. In connection with that a group of social workers in town led by

Dorothy Weiser Smith, who is the wife of Paul Gordon Smith, Literary Editor of the Los Angeles Times, I want to quote one sentence from this long letter. I don't recall how many dozens of letters were written on my behalf. We lost. That is beside the point. Mrs. Smith in writing to Walter Chambers then the State Relief Administrator made this statement, which I say proves again that in a similar situation as I found myself today I acted then as I am acting now. At least I am consistent. Whether that is a virtue or not is another question. Mrs. Smith who certainly is in a position to judge the competence of a social worker makes this point: I should say at this time I was her assistant in the State Relief Administration; "During all the years that [fol. 131] I have known Raphael I have found him to be absolutely honest in the broadest sense of this word, and to have a type or professional integrity which is unfortunately rare even in social workers, that type which will actually lead a person to sacrifice his position and be in danger of going hungry rather than strain his professional honor and violate his code of ethics. As we grow older it becomes more difficult to disillusion any of us." She is now a lady of about seventy-five. She continues, "but I should suffer a fresh disillusionment if I found that Raphael Konigsberg had acted in a manner which would cause shame or embarrassment to honorable professional colleagues." This was written March 22, 1947. This is the very period in which Mrs. Bennett alleges the various activities she charges me with.

Mr. Freston: May I ask another question? Mr. Konigsberg, Mr. Mosk a moment ago referred to the fact that you were commissioned in the Army.

The Witness: Yes.

Mr. Freston: At the time when you were commissioned were you asked any questions concerning your then or previous membership in the Communist party?

The Witness: I don't think so. I got my commission in, let me see now, '42. It was about September I reported for duty. I think it was the first week in October. It was a direct commission. I enlisted. This is how I happened to [fol. 132] enlist. They were asking for people with hospital experience. I was then Superintendent of the Sanatorium

in Duarte, I spoke about. They were asking for people. The Surgeon-General was asking for people with hospital experience to get in the Army, and they offered a direct commission, so I received a Second Lieutenant's commission. They asked what we felt we were entitled to, and I said, "Whatever you feel I deserve." The others received Major.

Mr. Mosk: You took the usual oath?

The Witness: I don't remember such a question.

Mr. Freston: If you had been asked that question were your principles the same so that you would have given the same answer as you have given this Committee.

The Witness: Yes. I am not sure that I understaid. Do you mean if they asked me then the same question you are asking me now?

Mr. Freston: Yes.

The Witness: What answer would I have given?

Mr. Freston: Yes.

The Witness: I would have given the same answer. I am giving now. I have given such answers before. I was asked by the Tenney Committee. I am not making up answers to suit this hearing. There was another hearing you never referred to before the Dillworth Committee hearing which I think was a sub-committee of the Tenney Committee. [fol. 133] It was about a year after the Tenney hearing. I was asked that question then. I was asked that question when I campaigned for the School Board. The committee of citizens who interviewed me, I did not know, they interviewed seventy-five people all over. They selected Dr. Claude Hudson and myself and some Union man whose name I have forgotten, three candidates, and they asked me those questions then because they were concerned. They had a right to be. I gave the same answer.

Mr. Freston: Do you recall the name of the committee?

The Witness: The Citizens Committee for Better Education. There was a Mrs. Yanow, I think. I think her husband is an attorney. There was a—Her husband is a screen writer. I can find out the names. I don't recall off hand. There was a committee of three that interviewed me. One was a Mrs. John—He is a very prominent radio writer, not screen writer. I have forgotten the name. I could find it out. A Dr. George Mangold, a Professor of Sociology at

18. He has a beautiful pipe organ built in his house. He was Chairman of the Committee, and Mrs. Yanow, and this other lady I don't remember interviewed me. They asked me the same question. That was when I first ran for the School Board, and then I ran two years later, and I don't recall whether I had any interviews because they already knew me then.

[fol. 134] Mr. Preston: Did you ever find any copies of the articles that you wrote in the Jewish Voice?

The Witness: No sir, I didn't. I probably didn't keep them. I am sure the Editor or the newspaper files must have them.

Mr. Preston: Does it have an office here?

The Witness: Yes, they moved recently. I think it is Fourth and Main. They were down on Pico someplace. I just saw in the paper. Mr. Samuel Gach is the Editor. He was the Editor then, and I believe he still is. It was just a period of a few months. It may have been almost a year. Those were simply reports of my experiences in the Army as I recall them, because I was at that time giving reports all over the community to different groups that asked me to. They were asking a lot of people that returned from the Army to tell about their experiences and I think that is essentially what they were. I don't remember what I wrote in those.

Mr. Preston: I have no more questions.

Mr. Sterling: I have no more questions.

Mr. Mosk: If I understand correctly we will submit a memorandum, and we will submit letters at some subsequent time.

Mr. Sterling: You would like to have an opportunity to be heard further?

Mr. Mosk: Yes.

[fol. 135] Mr. Sterling: Very well, we will adjourn the hearing upon call.

End of session.

[fols. 136-137] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 138] THE STATE BAR OF CALIFORNIA
 COMMITTEE OF BAR EXAMINERS
 SOUTHERN SUBCOMMITTEE
 LOS ANGELES

In the Matter of the Application of RAPHAEL KONIGSBERG,
 application for permission to take Bar Examination

(No. 1134)

HEARING OF JANUARY 27, 1954.

APPEARANCES:

Leroy A. Wright, II, Vice-Chairman
 Arthur E. Freston, Member of Committee
 Thomas H. McGovern, Member of Committee
 Sharp Whitmore, Member of Committee
 Alma Stayton, Assistant Secretary
 Raphaël Konigsberg, Applicant
 Edward Mosk, Applicant's Counsel
 Marion Farrell, Reporter

COLLOQUY BETWEEN ^{Members} ~~He~~ ~~members~~ AND COUNSEL

Mr. Leroy A. Wright, II: I would like to introduce to you two new members of the Committee. The Committee has undergone some changes here in the South since our last hearing. Mr. Whitmore, Mr. Konigsberg and Mr. Mosk, and Mr. McGovern. In view of these changes, Mr. Mosk, they culminated in this way: First, Mr. Sterling's term expired, and Mr. Whitmore was appointed to the place of Mr. Sterling. Then Harold Black, whom I think you know, who participated in both the other hearings, felt that the [fol. 139] duties of President of the Los Angeles Bar were such that he couldn't conscientiously perform that job and assume any semblance of practice if he was handling this job too. He resigned and has been replaced by Mr. McGovern. That leaves Mr. Freston and myself constituting the two members of the Southern Subcommittee who have participated in these hearings. Under the rules of the Committee two will constitute a quorum.

Mr. Edward Mosk: May I say this: I was of course familiar with the fact that there had been changes. I have discussed it with Mr. Konigsberg. I don't know how the rules of the Committee apply, but we would have no objection if the two members who have heard Mr. Konigsberg and heard our presentation—

Mr. Wright: That is what I was going to suggest as the way that the two members, being Mr. Fyeston and myself, would be the members to whom this matter would be submitted. Mr. Whitmore and Mr. McGovern not having heard the presentation before would not participate in the decision, however if there is a necessity for referring the matter or taking the matter up before the full Committee, they then being members of the full Committee, and it more or less being a trial of de novo, if it comes to that stage they would of course participate, so their withdrawal from participation would be only in so far as the deliberations and the decisions of the Southern Subcommittee would be concerned.

[Vol. 140]. Mr. Mosk: That is quite satisfactory to us. We have full confidence in the members of the Committee and of course would prefer to have the decision made by those who have actually heard it.

Mr. Wright: We discussed it here before you came in, and we felt it would not be proper for those who had not participated or heard any of the evidence to merely on the basis of a transcript participate. So with that understanding, and if that is satisfactory—

Mr. Mosk: That is satisfactory to us.

Mr. Wright: First of all I would like to say we apologize for keeping you waiting. You were scheduled for eleven. We got behind in our early morning schedule. We started at 8:30.

Mr. Mosk: We could see by the numbers waiting you were working all the time.

As far as this hearing is concerned, the primary purpose for which we requested the additional hearing was for the purpose of securing and presenting to the Committee letters of recommendation, letters of reference, character reputation, and second for perhaps a few summary remarks on behalf of Mr. Konigsberg. Now I have prepared that so that it perhaps will assist the Committee somewhat;

I have the letters in a single document with a cover memorandum which tells who the people are who are writing. [fol. 141] I have additional copies for each member of the Committee of the list itself, although not additional copies of the letters. I also have a memorandum which was prepared in support of the application, and in view of that fact I would only want a very few minutes in which to perhaps supplement it, but I would just briefly like to run through this so that the record will be clear on the list of persons.

Now, this list of persons who have written letters, all of course on their own volition, and all based on their knowledge of Mr. Königsberg over a period of many years; each of the persons did indicate when it was they knew Mr. Königsberg, under what circumstances and how well. Some of them go into more detail and others less, as is usually the case in letters of this type.

I have divided the list which appears in connection with the letters into categories, and point out to the Committee that there are in this list three attorneys, there are nine who fall into the general classification of businessmen in the community, three doctors, three connected with the ministry, three who are professors at universities, eight who are in varying fields of social work, three whom we have classified simply as other professionals, and three who are just individuals without specific background, but we feel persons of some significance. Then in addition there are six letters which we have attached here which [fol. 142] were written for Mr. Königsberg in 1940 at the time of some of his problems with the State Relief Administration which we have discussed at previous hearings before this Committee.

Mr. Wright: You referred to a Mrs. —

Mr. Königsberg: Dorothy Wyser Smith.

Mr. Mosk: We have attached those complete letters, and while they don't specifically refer to this situation we feel they are sufficiently pertinent in their remarks to be applicable also to this situation. Now, I do not want to read all of these letters and will not take the time of the Committee to do that, but I would like to kind of run through them and make some references with relation to them.

We have a letter by Attorney Paul Major of San Pedro who points out in part:

"I recommend Mr. Konigsberg unreservedly as a person of high moral principle and character. He has an excellent reputation and should be a real credit to the bar. He is a much more profound person than the average bar applicant and exhibits a social consciousness which, in my opinion, is unfortunately too rare among applicants."

Now there is a letter here from Attorney Mortimer Vogel. Most of the letters we asked they be sent directly to me. Apparently in this case he sent it to the Committee with a copy to me. I think there is one other person who [fol. 143] did that.

Mr. Preston: We have it here. (Handing letter to Mr. Mosk)

Mr. Mosk: We also have a letter from Mr. Albert C. Bricker who is a well known insurance man in this community who says:

"I have known Mr. Konigsberg for approximately eight years as a man of integrity and of the highest moral character, concerning which, to my knowledge, there has never been any question. Throughout the years I have known Mr. Konigsberg he has impressed me as an unusually intelligent and capable person eminently suited for practice in the legal profession."

I have a letter from a George Stiller, advertising and public relations, who says in part:

"It is my firm and sincere conviction that he would be a worthy addition to the legal profession because of his wide educational background, his integrity and his high character."

"Coupled with these valued attributes is another I deem essential in an attorney—a warm and human personality, deeply interested in people, as people, and in helping solve their problems."

A letter from James E. Tuma, who is connected with the U. S. Geophysical Corporation.

Mr. Konigsberg: They make oil and mining explorations. [fol. 144] Mr. Mosk: I was looking at the letter head and it said "Airborne Geophysics". I didn't know what it

means. He says in part: He says that he became acquainted with Mr. Konigsberg at the City of Hope Sanitarium where he was engaged in a survey of personnel and administration of the institution, and he says:

"The departments directed by him were of vital importance in administering the needs of the patients from the date of entry to the date of discharge. It required a great deal of humanitarian understanding and guidance to keep the patients contented, so vitally necessary to the recovery from tuberculosis.

"I was in close contact with him for a period of six months and know that he has a very fine character, good judgment, and a trained mind for detail and research. I am satisfied that he is fully qualified to become a good and successful lawyer."

A letter from the Right Reverend Monsignor Thomas J. O'Dwyer who says:

"I am writing you on behalf of Raphael Konigsberg now residing at 2446 Echo Park Avenue, Los Angeles.

"I wish to advise that I was well acquainted with him between the years 1936 and 1940. During that period he was employed as a member of the staff of the Council of Social Agencies in Los Angeles. He enjoyed an excellent [fol. 145] reputation among all who were acquainted with him during those years.

"Mr. Konigsberg resigned his position with the above-mentioned Council of Social Agencies and accepted an assignment with the newly-established State Relief Administration. Later he joined the armed forces and I assume he will present to you references from persons who knew him in the succeeding years.

"I do not hesitate to recommend him to you. I am satisfied that he will measure up to the high requirements established for members of the legal profession."

Then we have a very long letter from Victor S. Netterville of the School of Law of the University of Southern California, and Professor Netterville writes specifically of the period when he knew Mr. Konigsberg which was during his student days at the University of Southern California, and Professor Netterville addressing himself spe-

officially to the ; that is before this Committee says in part:

"It was my impression that Mr. Konigsberg is a man with the courage of his convictions, but not one who holds these convictions blindly or with any but the most honest motives. He seems to hold the Constitution in high esteem and is a vigorous supporter of civil rights. But it was interesting to note that despite his vigorous position, he showed a willingness to recognize the necessity from time [fol. 146] to time of balancing the interests of the individual against the interests of society when the legislature takes action to protect society as a whole from threatened dangers. Throughout our discussions—discussions in which there was ample opportunity to voice and advocate extreme views—Mr. Konigsberg showed a wholesome willingness to learn from others and to test the validity of his views in the competition of such discussions. He indicated to me an open-mindedness seemingly inconsistent with any calculated disregard of his duty as a loyal and conscientious citizen.

"Based solely then upon my contact with Mr. Konigsberg as a law student, I would have no hesitation in recommending him for admission to the bar."

A letter from Harry Friedman, Assistant District Supervisor of the Department of Education of the State of California who writes:

"During my frequent contacts with Mr. Konigsberg I found him to be responsible for his statements to the patients he served and to the agencies and individuals he dealt with in their behalf. He was always sincere in his efforts to better their conditions, and in developing programs for them, showing imagination and resourcefulness. At no time during my relationship with Mr. Konigsberg have I seen evidence of anything but excellent moral character."

A letter from Mrs. Jeanne G. Young, Director of Medical [fol. 147] Social Service at the Cedars of Lebanon Hospital, who writes:

"I first became acquainted with Mr. Konigsberg in his capacity as Director of Social Service, City of Hope San-

tarium, Duarte, California and served as a member of his staff in the capacity of supervisor from February, 1948 through August, 1949, at which time I left in order to take my present position as Director of Social Service at Cedars of Lebanon Hospital. During the time of our association I was most impressed by Mr. Konigsberg's sincerity and integrity, both as an individual and in his professional capacity. I found him to be a person of principled conviction and willing to defend his principles even at great personal sacrifice.

"I was especially impressed with his concern for the total welfare of our patients and staff."

Now, that is only a quick sampling of the letters which are here. It is our position, of course, that these letters are sincere expressions of the feelings of persons over all of the varying years of Mr. Konigsberg's career. Now, I have copies of the letters themselves, and I think you apparently have a letter from Rabbi Jehudah Cohen, which I only have a copy of in here. With those two letters then we will submit this as Applicant's exhibit next in order.

Mr. Wright: That would be Applicant's Exhibit E if my [fol. 148] recollection is correct.

Mr. Mosk: I also have two additional copies of the list itself for the members of the Committee if they wish.

Mr. Wright: They will be received and marked. I will not put the mark on them right now. (Applicant's Exhibit E received at this point)

Mr. Mosk: Now, we have next then and finally a rather brief memorandum. I felt that the record itself and Mr. Konigsberg's own comments probably speak better for him than anything that could be prepared by way of memorandum, however I have this eight page memorandum and with copies for at least three members of the Committee which I would like to submit, and to amplify with a few additional remarks. I would like to say this:

Mr. Wright: Pardon me just a minute. I was wondering, Mr. Freston, do you have any questions you wanted to ask?

Mr. Freston: I don't believe so. I assume you will file the memorandum.

Mr. Mosk: Yes.

Mr. Wright: I take it then that this is in the nature of summation?

Mr. Mosk: That would be my intention. As I have indicated, I feel that Mr. Konigsberg in two previous hearings has expressed his feelings about this hearing. One additional thing has happened since the last hearing, and that [Vol. 149] is that he has received notification that he actually did pass the Bar, which I think now places the present issue even more squarely than it did earlier. I would like to thank the members of the Committee on behalf of Mr. Konigsberg for having given him the opportunity to show that he was able to pass the Bar examination itself. You probably will recall there was some question about allowing him to take the examination at an earlier date. It seems to me that this Committee has a very grave responsibility in this case. I think the issue is very squarely this: Whether the qualifications for the practice of law in California may be determined by the political, economic and social thinking of the applicant. I think this is the issue very squarely, and I think that this is the matter which will have to be decided by this Committee.

I am satisfied that this is a field in which this Committee does not have the power or the authority to intrude. We have a situation where if this Committee is to decide that Mr. Konigsberg by reason of expressions of opinion or political ideas that he may have expressed at some time in the past is to be denied the right to practice law in the State of California then no person is going to be safe, either those who are attorneys and who are now practicing or who hope someday to practice in the State of California. Because if this Committee can set up standards for determining who is to practice law on the basis of the Committee's or anyone else's opinions of what is right and what is wrong in the fields of politics, economics and social theories, then these criteria may be changed from day to day and from month to month and from year to year so that those who are at any particular time sitting on the Board and sitting in judgment on future applicants for membership admission to the Bar of the State of California, the entire determination will then be in the hands of those who sit on the board at a particular time, and I submit that this is contrary to the most basic principles of American life. We have always believed that each man stands on his own feet.

We have always said that the questions of moral character that are involved in admission to the Bar are matters of criminality, are matters dealing with moral turpitude. Mr. Konigsberg has at none of these hearings been accused of any acts which fall within the classification of what we have known as moral turpitude or criminality. The maximum that has been charged here, regardless of the question of proof, in giving to the—let us call it—accusation, the maximum weight to which it is entitled would be to assume that at some time, some thirteen, approximately thirteen years ago he may have been a member of an organization which is, let us say, unpopular in the public life today. Beyond that the only other matter which has come [fol. 151] before us which we are in a position to rebut is the matter of certain articles which he has written. We can only presume that these articles were brought forward because they were not necessarily in line with the general political thinking of the majority of the American people at the particular time, but as soon as we start examining the writings of a person or the thinking of a person or even the political affiliations of a person we enter into a field where there is no stopping. And I submit that this responsibility lies with the members of this Committee who must decide whether because of a person's political, economic or social thinking this Committee can set itself up to determine that he may not practice law in the State of California. It is my opinion that this is contrary to the most fundamental principles of American life, and I submit that Mr. Konigsberg's application should be accepted, and I am satisfied that he will be a credit to the profession of law.

Mr. Wright: Thank you, Mr. Mosk. I was wondering whether or not you in the course of your memorandum you had addressed yourself at all to the problem of the disinclination of the applicant to respond to questions proposed by the Committee.

Mr. Mosk: I have addressed myself to that. The memorandum, however, is not lengthy and if you wish I would [fol. 152] like to say just a brief word in addition then on that point.

Mr. Wright: That is one thing that frankly bothers me that we discussed in our previous hearing.

Mr. Mosk: I can understand why that is a matter that does bother you. I think that I indicated at the previous hearing by analogy one of the answers that I feel is pertinent to this. I indicated, and I feel that in every judicial proceeding and every legal proceeding there are many matters that the tribunal would like well to know to assist it in reaching its conclusion.

The matter that comes to mind most quickly, of course, is simple hearsay, which would always be of interest to the judge to know. It would always be helpful if he could have some of the hearsay matters, and many of which we would not, if we were not learned in the rules of evidence, that this might be helpful to the court, and yet the rules of evidence for good and sufficient reasons say that these are not, because of certain fundamental principles, that the court may not know.

Now, it is implicit in what I have said up until now that matters of the political, economic and social nature, matters of the mind, cannot become the standards upon which the decision as to whether an applicant is of good moral character can be predicated. There are basic principles as to whether the Committee or any other tribunal may inquire into matters of the mind and thinking.

Now, Mr. Konigsberg is obviously, as indicated by many of the letters, and has always been a man of great principle, and I feel that the Committee, since it is our position that it may not inquire into these fields must not make its decision based on Mr. Konigsberg's principal refusal to answer questions in a field in which the Committee may not inquire. And this fundamentally is our answer that these are matters which can have no bearing on his moral fitness to practice law, and since they cannot I think it then becomes even a greater indication of the extreme principles upon which this man stands and an even greater indication that as a lawyer he will be a credit to the legal profession.

Mr. Wright: You will file the memorandum?

Mr. Mosk: Yes. I think I have four copies there which I am filing. (Applicant's Exhibit F received at this point)

Mr. Wright: With that I take it the matter is submitted.

Mr. Mosk: It is submitted as far as I am concerned.

Mr. Wright: At least it has been and will be more of a

mental exercise, but none that I have tackled for a long time.

Mr. Konigsberg was then excused.

~~[[fol. 154-155]]~~ Reporter's Certificate to the foregoing transcript omitted in printing.

~~[[fol. 156]]~~ EXHIBIT "B" TO PETITION
THE STATE BAR OF CALIFORNIA
COMMITTEE OF BAR EXAMINERS
LOS ANGELES

In the Matter of the Application of RAPHAEL KONIGSBERG,
appeal from determination of Southern Sub Committee
(No. 1194)

Hearing of March 13, 1954

ATTENDANCES:

Maurice D. L. Fuller, Chairman
Leroy A. Wright II, Vice Chairman
Arthur E. Preston, Member of Committee
William M. Maxfield, Member of Committee
Thomas H. McGovern, Member of Committee
Vincent H. O'Donnell, Member of Committee
Sharp Whitmore, Member of Committee
Georgio O. Farley, Secretary
Alma Stayton, Assistant Secretary
Raphael Konigsberg, Applicant
Edward Mosk, Applicant's Counsel
Carol E. Jacobs, Reporter

COLLOQUY BETWEEN MEMBERS, COUNSEL AND APPLICANT

Mr. Maurice D. L. Fuller: I will introduce the people around the table. Mr. Whitmore, Mr. Farley, I am Mr. Fuller, Mr. Wright, the reporter, Mr. Preston, Mr. Maxfield, Mr. McGovern, Mr. O'Donnell.

Gentlemen, this is an appeal from the determination of the Southern Subcommittee and it is a matter of a hearing or submission to the entire Committee.

[fol. 157] It has been the practice of the Committee in the past to deem the record which has been introduced before the Subcommittee as part of the record before the main Committee, and I might tell you the documents now already in the record.

One, we have a transcript of the prior hearings. I assume you have had a copy of that and are familiar with it. Then, there is a document entitled "Army Talk" which is Applicant's Exhibit C. There is another printed pamphlet entitled "Morale" which is Applicant's No. B. There is a pamphlet entitled "TM 28-210" which is Applicant's A. There is a Memorandum in Support of Application which is Applicant's F.

There is a black photostat of various printed articles by Raphael Königsberg which is entitled Committee's No. 1, and that I believe is to be returned to you and we will use in place—

Mr. Edward Mosk: That is yours, the photostat copy.

Mr. Fuller: I see, we will use them interchangeably.

Mr. Raphael Königsberg: Sometime I'd like to get the Army publications back.

Mr. Fuller: I think some time they will be available to you.

We have here a list of persons testifying to the character [fol. 158] of Raphael Königsberg which is entitled Applicant's E. I think that carries A through F except for D. Here is D, another printed pamphlet "Why I Am in This Fight" which is Applicant's D, and then a letter dated September 19, 1948, which is attached to Statement of Raphael Königsberg which is marked Committee's No. 3. Then a transcript of the testimony, your testimony, Mr. Königsberg, before the California Senate Fact Finding Committee on Un-American Activities which is—

Mr. Königsberg: The Tenney Committee, sir?

Mr. Fuller: I don't know. Mr. Tenney seemed to be the Chairman of this Committee. That is Committee's No. 2. The other documents in the record which are not identified but which we will deem part of the record are: One, your

Student's Application and Affidavit which was filed with the Committee back in June 30, 1953; then your application more recently filed on—

Mr. Goscoe O. Farley: This is Registration as a law student.

Mr. Fuller: This is original registration of law student dated December 5, 1950. Then there has previously been furnished to the Committee the full pages of the periodicals from which the editorial comments were taken. That not having a number yet, we will give it the Committee's next in order. I think that is No. 4, is that right? Anyway, it will take the appropriate number, I believe No. 4. That [fol. 159] will also be part of the record. As I previously told you the whole Committee will consider the whole record and read all the transcripts of the previous hearings—most of us have read all of it already. Now we will give you an opportunity, Mr. Mosk or Mr. Konigsberg, to say anything you wish to say or give any testimony you wish to give.

Mr. Mosk: We have this one thing, Mr. Chairman; that we are prepared to submit the matter on the record as it is now in its present condition with the exception that Mr. Konigsberg would like to add some personal remarks of his own including a statement of his general background and experience record which I think is not in the record as it now appears.

With the Committee's permission, Mr. Konigsberg would like to address himself to the Committee at this time.

STATEMENT OF MR. KONIGSBERG

Mr. Konigsberg: I will read slowly so the stenographer can get it. The other had trouble last time. I will read slower than usual.

I recognize that the Committee of Bar Examiners of the State Bar of California is empowered to pass upon the moral character of applicants for admission to the bar. This power is based upon Section 6060(c) of the Business and Professions Code:

"To be certified to the Supreme Court for admission and [fol. 160] a license to practice law a person shall be of good moral character."

A search of California cases I have made involving judicial interpretation of this code section reveals that without exception such determination has been based upon the presence or absence of conduct of a criminal nature, conduct involving moral turpitude, on the part of the applicant for admission. No instance could I find either of an applicant refused admission or of an attorney disbarred or suspended where the decision was based on the beliefs of the applicant or on any other ground but one of a criminal nature or involving moral turpitude.

That interpretation and the view that such must have been the legislative intent, is strongly supported by the grounds specifically enumerated by the legislature for the disbarment or suspension of attorneys, stated in Sections 6101 to 6106 of the above mentioned code:

"Conviction of a felony or misdemeanor, involving moral turpitude, constitutes a cause of disbarment or suspension" also "disobedience or violation of a court order . . . appearing for a party without authority" or "commission of an act of moral turpitude, dishonesty or corruption."

That interpretation is supported further by the act of the Committee of Bar Examiners itself in not including in the application form which all applicants have to fill in any [fol. 161] questions relating to beliefs in the series of questions dealing with "Moral Character." Specifically, Questions 16 to 23 inclusive inquire only whether applicant has violated any law or ordinance or committed any felony or misdemeanor, etc.

The State Bar has been administering the State Bar Act and its provisions relating to applicants for admission for many years. It must be presumed to have drafted this questionnaire. It is drafted in a manner calculated to cover all of the qualifications essential for admission to the bar. By its failure to include therein any questions even remotely related to those of the subject matter of which I was asked, the State Bar has construed the term "moral character" then as having no relationship to such inquiries. This Committee, therefore, should not now attempt to avoid the State Bar's construction of the law for the purpose of sustaining its present position.

Furthermore, the addressing of questions concerning

personal beliefs to the applicant under circumstances in which other applicants are not required in any manner to deal with the general subject matter of such questions places me in a special category and establishes for me special standards not applied to others. Such discrimination is a violation in my opinion of the equal protection clause of the 14th Amendment of the Constitution of the United States and Article I, Sections 11 and 12 of the California [fol. 162] Constitution.

Accepting then, as we must, that the "good and moral character" qualifications must be based upon the presence or absence of acts of a criminal nature, it is significant that the Subcommittee of Bar Examiners has not charged me with any such criminal acts nor have I ever been guilty of any such acts. I submit, therefore, that on this ground I must be found to of good moral character and so entitled to admission to the bar.

The only acts or words alleged by the Committee against me in the three hearings which I had are those involving my alleged beliefs. Now, unless therefore the Committee is prepared to take the position that it is now a crime in the State of California for applicants to the bar to have beliefs which are different, (if that be the case) from the views of other persons in the community or of the majority of the Bar Examiners itself, then the Committee has not alleged any grounds which may legally be the basis for refusing to recommend admission to the bar.

If the Committee's refusal in this case is based on my beliefs as appears to be the case from the nature of the hearings, then the Committee clearly is imposing a political test on the privilege of practicing law in this state. Such a position, as the members of the Committee surely know, would do great violence to the fundamental constitutional rights of lawyers, as of all citizens, to hold any [fol. 163] views that they desire. Such a position would be comparable to imposing a test oath, so abhorrent to the American concept of justice. The American Bar Association Journal No. 37 ABA Journal 123 (1951) has a series of statements signed by outstanding leaders of the profession nationally, commenting on this very point.

The Subcommittee of Bar Examiners may, then, be pro-

ceeding on the basis of the power granted it by the recently enacted Section 6064.1, the constitutionality of which has not yet been determined:

"No person who advocated overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law."

As the transcripts of my hearings will show, I have stated unequivocally that I have never advocated overthrow of the government by force and violence, that I do not now hold any such position. Furthermore, there is not a single act or word in all of the many alleged by the Subcommittee in the hearings and covering many years of my active public life which even remotely suggests any such advocacy by me. Quite the contrary, if I may say so, the entire record shows only that I was an informed and active citizen who at all times was moved strongly by my belief in the duties of a citizen in our society.

[Col. 164] It follows, therefore, that on this ground too, the Subcommittee has no legal basis for holding that I am morally unfit to practice law in this state.

It may be noted in passing that Section 6067 of the Business and Professions Code, which declares that "Every person on his admission shall take an oath to support the Constitution of the United States and the Constitution of the State of California" is not directly an issue in this case, but I wish to make it clear that I am ready at any time to take such oath.

Assuming, then, that Section 6064.1 is constitutional, it is clear that that law definitely sets the limit in this state to any inquiry as to political beliefs of lawyers, setting aside for the moment the fundamental limitations of the First Amendment. Beyond the questions, then, as to applicant's present personal advocacy of overthrow of the government by force and violence no inquiry may go. That question having been asked me and answered, no other inquiry concerning my alleged beliefs may be made.

The history of Section 6064.1 establishes that the Legislature in 1951, the year of its enactment, specifically re-

jected the concept of an expurgatory oath for lawyers in this state or for candidates for admission to the bar. This oath was contained in what was then known as Senate Bill 1666 which proposed to add such an oath to the Business [fol. 465] and Professions Code. This Bill would have required that there be added to the Business and Professions Code the following oath for lawyers and applicants for admission to the bar:

"And I do further swear or affirm that I do not advocate nor am I a member of any party or organization, political or otherwise, that now advocates the overthrow of the Government of the United States or of the State of California by force, violence, or other unlawful means, and that during such time as I am a member of the State Bar of California, I will not advocate nor become a member of any party or organization, political or otherwise, that advocates ..." etc.

Senate Bill 1666 failed of passage. Then Section 6064.1 was sponsored by the State Bar itself and was enacted. This section now occupies the field on that subject, therefore, the Committee only has the power under this statute, as I see it, to concern itself with the present personal advocacy of the applicant. It cannot inquire into the political affiliations, beliefs or associations of the applicant, since the Legislature, by failing to adopt Senate Bill 1666, excluded the other areas in the realm of belief. No such personal advocacy of force or violence was even alleged against me in the three hearings.

Now, despite the limitations imposed by the present law, the Subcommittee persisted in directing to me many other inquiries concerning my beliefs and ideas. In doing so, I [fol. 166] I regret to say the Committee clearly displayed the mark of the censor. The questions of the Committee related to my participation in campaigns to secure a peaceful solution of international problems or such matters as criticism of current foreign and domestic policies. Surely it is not criminal yet in this country and state to express opinions about current events. I might mention in passing that many of these opinions are expressed by leaders of the Bar, Justices Black and Douglas, Dean Griswold of Harvard. Is the Committee prepared to say such persons

are morally unfit to practice law in the State of California?

One must conclude, from the nature of the Committee's questions, it believes those who do offer such opinions not fit to practice law. Such a policy is one of opposition to ideas, clearly a policy that is antagonistic to the genius of the American democratic system. To show how abhorrent such a practice is, we need only ask this question: Could the State Legislature pass a law saying that anyone who opposed war or who favored fair employment practices, for example, was not fit to practice law in this state?

My position, stated briefly, is based upon the rights guaranteed to every citizen, lawyer or not, under the First Amendment of the Constitution of the United States, and Article I, Section 1 of the California State Constitution. We need not present any detailed, documentary evidence [fol. 467] to support the position that this First Amendment is relatively clear, but to summarize my position:

(1) This Committee of Bar Examiners of the State Bar of California is not empowered to make an individual's beliefs and opinions (with the exceptions noted, that is Section 6064.1) the basis for determining his moral fitness to practice law.

(2) Such a policy, if established, would destroy the independence of the Bar and destroy the freedom of choice of counsel.

(3) Since no other charge was offered against the applicant but the one allegedly involving unpopular beliefs, no constitutionally recognizable grounds reflecting adversely upon my moral character were offered and, therefore, I have affirmatively carried the burden of proving my good moral character and I am entitled to a Certificate of Admission from the Committee.

The conclusion is unavoidable that the Southern Subcommittee failed to consider properly the evidence in this case and, I base this conclusion on these three grounds or items:

First, the Subcommittee in violation of its own rule, Rule 10, Section 101, failed to state any findings of fact or specific reasons for its decision when it informed me by mail it was denying me certification. This is such an unreason-

able act as to constitute both abuse of discretion and in-
[fol. 168] fringement of my rights under Article I, Section
1 of the California Constitution and under the Fourteenth
Amendment of the Constitution of the United States.

Even in cases reviewing loyalty hearings relating to public employment it has been held that due process of law is not to be ignored, though only a privilege (such as the privilege of practicing law) is being considered and I cite the two cases of *Joint Anti-Fascist Committee vs McGrath* 341 U.S. 123, and *Weiman vs Updegraff* 344 U.S. 183. Furthermore, the U. S. Supreme Court has often held, as the Committee well knows, that neither Congress nor the states (and therefore, nor any state body such as the Committee) can circumvent limitation on these constitutional powers by indirection or by the pretense of regulation and I cite the authority, among many, *Frost vs Railroad Commission of California* 271 U.S. 583; *Near vs Minnesota*, 283 U.S. 697.

Second, a further question relating to the issue of fair play and due process of law is raised by the fact that ever since I began the study of law in September of 1950, the Committee of Bar Examiners has been informed of my record and my character. If there is a question as to my moral character, why did the Committee wait over three years until just ten days before the Bar examination to call me in for interrogation? Why did it permit me to pursue a [fol. 169] long and strenuous course of study for a man of comparatively advanced age at great sacrifice and effort to myself and my family? Since I began the study of law at the age of thirty-nine and a half years, I can safely say my moral character would not be likely to change while I was studying law.

Finally, a dispassionate evaluation of the total record made over a long and comparatively public career must lead to the conclusion that at any rate I am a rather mature person with a pronounced sense of personal responsibility for my duties as a citizen which I have attempted to discharge, and one who would conscientiously discharge the duties of a lawyer. This conclusion, if I may be so immodest, is based on the following brief record of experience and education:

First, graduation from USC Law School in June 1933, and passing of the October 1933 Bar Examination in California.

Secondly, receiving a Bachelor of Arts Degree at Ohio State University, Columbus, Ohio, June 1931, where I received teaching credentials and completed four years work in three.

Third, the Master of Arts degree in Social Administration from the Graduate School, Ohio State University, August 1935. I was granted a scholarship for this work.

[fol. 170] Fourth, completed one year's course in Local Municipal Administration (because of my interest in public affairs) given by the Institute for Training in Municipal Administration in Chicago 1940 to '41.

Fifth, completed two seminars of work at Claremont College, Claremont, California in preparation for the Doctor of Philosophy degree, 1941-42. Unfortunately, this was interrupted by World War II and my enlistment therein.

As to my professional experience: from 1932 to 1933 I was a teacher in the high schools of Cleveland, Ohio, teaching American History and English Literature.

From 1933 to 1950, social work executive for various agencies in Washington, D. C., Cleveland, Ohio and Los Angeles.

As to my military service, I enlisted in the U. S. Army October 1942. Commissioned as Second Lieutenant of the Medical Administrative Corps. Served as Commanding Officer, Detachment of Patients, Lovell General Hospital, Fort Devens, Massachusetts until February 1944. Then sent to Army Orientation Staff School, Lexington, Virginia for further training in orientation. Sent overseas June 1944. I served in North Africa, Italy, France and Germany, primarily as Orientation Officer.

I was promoted to Captain and served as Orientation Officer for the entire U. S. Seventh Army in Germany in [fol. 171] which post I was responsible for the orientation program for 400,000 American troops. Honorably discharged April 1946.

Now, as to my civic affairs, I was a candidate for office three times. I was a candidate for the Los Angeles Board

of Education in 1947 and '49. I was a candidate for the State Assembly in 1950.

Finally, with respect to my character, the letters you received from 36 outstanding citizens in this community I think should bear some testimony. These people were doctors, lawyers, ministers, business men, social workers. I have asked the weight the Committee should attach to these letters and cite two cases: California Supreme Court case *In re Stepsay* 15 Cal. 2nd 71 (1940), the Court said such letters are entitled to a most respectful consideration by this court when passing upon petitioner's moral fitness to practice law in this state."

And again in the case of Warbasse vs State Bar 219 Cal. 566 (1933), the Supreme Court said, "We believe that the opinions of those who have had ample opportunity to know his character and to observe his conduct over a long period of years is entitled to a great deal of weight."

As further evidence of my conclusion I have affirmatively carried the burden of proving my good moral character, [fol. 172] may I point to my conduct before the Subcommittee in three hearings. In the hearings may I say I steadfastly demonstrated my adherence to the basic constitutional concepts of our society. Even when a member of the Committee pointedly implied that persistence in this attitude might cost me my license to practice law, I declared it to be my duty as a citizen to defend our constitutional principles and to refuse to join in what I believed to be undemocratic conduct or activities.

In closing, I respectfully urge the Committee of Bar Examiners to decide this case on the basis of broad principle. A reversal of the action of the Subcommittee, which I ask, a reversal of the case based on constitutional guarantees and elementary justice, will go far in my opinion in arresting the trend toward the application of thought control to the Bar, toward the destruction of the independence of the Bar, and would strengthen faith in our democratic system.

I respectfully submit this as my statement.

Colloquy between Members, Counsel and Applicant

Mr. Mosk: That completes our presentation. We have nothing further to offer at this time.

Mr. Fuller: I am sure some questions may have occurred to the northern members of the Committee who have read the record. I think they ought to ask them to complete the record.

Mr. Konigsberg, you made a statement just now and I [fol. 173] think it is somewhere else in the record, speaking of some prior knowledge of the Committee. Are you contending that the Committee knew anything about you prior to these recent proceedings other than set forth in this application?

Mr. Konigsberg: Yes, because the petition registering as a law student was filed back in 1950.

Mr. Fuller: That document you are now exhibiting

Mr. Konigsberg: . . . and in that application was given pertinent information as to my activities. That document too, rather in connection with that document. The Committee has the copy I believe. It is of my appearance before the Tenney Committee, and so forth, all of which suggest, I presume, in the minds of the Committee grounds for suspicion. They existed in 1950 and I have done nothing since then. I have been too busy studying law to do anything else.

Mr. Fuller: Did we have before us any transcript of the Tenney Committee hearings at the time we got this?

Mr. Farley: I don't think so.

Mr. Mosk: I think there is a question on the form which requires reference to that.

Mr. Fuller: What I am trying to find out is if there is anything besides this form that he is relying on.

[fol. 174] Mr. Konigsberg, will you point out on that form the particular material you are speaking about?

Mr. Konigsberg: The first is my statement in the first question of my employment with the California Eagle. The very first questions directed to me at the first hearing by the Committee were, in effect, why was I writing this material for the California Eagle.

Mr. Fuller: What you are saying

Mr. Konigsberg: I report that I was employed at the

California Eagle, and the documents you have here are reprints, duplicates of the columns I wrote for the Eagle.

Mr. Fuller: You have reason to believe that this Committee which receives these applications—of which we receive hundreds and thousands—will run them all down, make the investigation we ~~now~~ make at the time of admission to practice, because that is not a fact.

Mr. Konigsberg: Isn't it a logical assumption?

Mr. Fuller: Regardless of your assumption, I want to know the facts on which you base your statement.

Mr. Konigsberg: The Committee was informed in 1950 that I was prepared to study law in this application, and the information therein could have provided grounds for suspicion as to my moral character in 1950 as easily as in 1953.

Mr. Fuller: You have no basis in fact to testify that [fol. 175] these editorial statements were in the records of the Committee any time before?

Mr. Konigsberg: No.

Mr. Fuller: That is all I want to make clear. All you are saying is that we had that document in our file and if we had spent a great deal of time, or the time that we have spent at this time, we might have dug out this additional material.

Mr. Konigsberg: I am saying that whatever is grounds for suspicion existed in 1950. I have done nothing since then—I have been too busy studying law—which would add to the record.

Mr. Fuller: That is your assumption. You have no factual evidence to support that.

Mr. Konigsberg: That is a fact that in 1950 I submitted this application.

Mr. Fuller: I want to know the factual material which would indicate that this Committee knew at that time what it knows now.

Mr. Mosk: I think the only point is this: Mr. Konigsberg's point is that he submitted this application and he presumes that any matters that the Committee has now turned up raising questions as to his moral character were available at the time he submitted this application.

Mr. Fuller: I am willing to let the record stand on that basis.

[Vol. 176] Mr. Vincent H. O'Donnell: What is the title of the application?

Mr. Konigsberg: The Committee have about the only title. It is the one on which every person who studies law or decides to study law must register.

Mr. Fuller: Mr. Konigsberg, what have you been doing with your time during the last year? What is your present employment?

Mr. Konigsberg: I am not employed, sir.

Mr. Fuller: What are you doing?

Mr. Konigsberg: I am hoping to get employed but I am unemployed now. My wife is employed, fortunately, and we are able to get along.

Mr. Fuller: What organizations do you presently belong to?

Mr. Mosk: To which I object on the grounds that this is a violation of the witness's rights under the First Amendment of the Constitution.

Mr. Fuller: You mean to say that he shouldn't tell us whether he belongs to the Elks or the Masons or things of that sort?

Mr. Mosk: That would be my position.

Mr. Fuller: We can't determine any organization he belongs to? He doesn't have to answer at all?

Mr. Mosk: That would be my position that his beliefs and associations are not within the scope of this hearing.

[Vol. 177] Mr. Fuller: It does not necessarily relate to beliefs. We all know many organizations are not based on beliefs. I think we are entitled to know who he associates with.

Mr. Konigsberg: I respectfully say that you are not entitled to know my associations and any person may refuse to answer on the basis of the rights of a citizen under the First Amendment which I have previously referred to in my testimony.

Mr. Fuller: You testified before the Tenney Committee. I assume you have re-read your testimony.

Mr. Konigsberg: No, sir, I haven't re-read it. I had forgotten about it until Mr. Freston referred to it in the first

hearing. I don't recall what is in it. I have a general idea, yes.

Mr. Fuller: Do you have any reason to change your testimony, your position you took in that? Is that still your position, whatever you may have said at that time?

Mr. Konigsberg: I can't recall everything I said.

Mr. Mosk: May the witness re-read it?

Mr. Fuller: I would be glad to have him re-read it and tell me how he would change that testimony at this time, if he would change it, or anything he may have said at [fol. 178] that time. (Document was handed to witness)

Mr. Konigsberg: Do you wish me to read all of this?

Mr. Fuller: Yes, I think we can afford to take the time.

Whereupon there was a recess while the witness read the document referred to . . .

Mr. Fuller: Everyone is present now. Are you ready to answer the question?

Mr. Konigsberg: Yes.

Mr. Fuller: Is there anything about that testimony that you wish to correct in view of the present circumstances?

Mr. Konigsberg: No, there is nothing I would correct. You mean the sense or the type of answer I would give?

Mr. Fuller: Yes, exactly.

Mr. Konigsberg: I might not give the answers, perhaps, in the same way, but I think the general import would be about the same.

Mr. Fuller: The position evidenced there would be your position at present?

Mr. Konigsberg: I think, generally speaking, yes.

Mr. Fuller: In some of these editorials written by you there is some language I would like to question about. In [fol. 179] the editorial entitled "Time for Courage" you make the following statement:

"We must also arm ourselves with the truth about the world's daily events. This will be found only in such publications as the California Eagle, People's World, National Guardian and the new negro monthly, "Freedom". And in the radio programs of an Averill Berman."

Is that a correct statement?

Mr. Konigsberg: You mean did I say that?

Mr. Fuller: First, yes.

Mr. Konigsberg: I presume I did if that is an accurate copy of the column I wrote.

Mr. Fuller: Is that still your position?

Mr. Konigsberg: How do you mean "still my position"?

Mr. Fuller: Is that still a true statement? Is that what you would testify to be a true statement?

Mr. Konigsberg: Well, the material I wrote there I wrote as a working newspaper man, Mr. Chairman. I think—when a person writes for any publication, I think there is involved a question of freedom of the press as well as freedom of speech which I have referred to before.

Mr. Fuller: In truth or falsity?

Mr. Konigsberg: Regardless of truth or falsity, it is a question of—having been a newspaper man, I think the material one writes for newspapers, or magazines or books [fol. 180] is clearly covered in the First Amendment as well as freedom of speech. I am stating that as my belief which I am willing to admit. If this is an accurate copy of the column I originally wrote (I don't recall the date) then I did say that. As to whether I still believe this or not, then I think you are venturing into the realm of belief again.

Mr. Fuller: You refuse to answer that question?

Mr. Konigsberg: I don't refuse to answer. I say that on the basis of my rights under the First Amendment I am not required to answer such a question.

Mr. Fuller: Then you are refusing to answer.

Mr. Konigsberg: I don't believe I am refusing to answer. If that is the Chairman's interpretation, that is his privilege.

Mr. Fuller: Is it your interpretation that newspaper men have the right to print false statements?

Mr. Konigsberg: No, I wouldn't say a newspaper man should knowingly print false statements. As a matter of fact I think he should, and I believe most newspaper men, or all newspaper men, have held to a high standard of veracity in everything they write.

Mr. Fuller: Was this a true statement at the time you wrote it?

[fol. 18f] Mr. Konigsberg: If I wrote that, I must have believed that at the time.

Mr. Fuller: Do you believe it is a true statement at the present time?

Mr. Konigsberg: As I said, what I believe at the present time I think is included as to the extent of your inquiry into my beliefs.

Mr. Fuller: You refuse to answer?

Mr. Konigsberg: No, I don't refuse to answer. I believe that what I believe today has no bearing on my moral fitness to practice law.

Mr. Fuller: Now, in the editorial entitled "The American Revolution"—or at the end of the editorial entitled "If I Were President" there is a legend reading as follows:

"Free Lawson, Trumbo, Dennis, Fast or this year of freedom may be your last! Write the President."

What were those gentlemen incarcerated for at the time?

Mr. Konigsberg: Larson, Trumbo and who else?

Mr. Fuller: Dennis and Fast.

Mr. Konigsberg: Well, as I recall, Lawson and Trumbo of course were two of the Hollywood Ten who refused to testify or took the position again on the First Amendment, if I remember correctly, before the Un-American Committee [fol. 182] of Congress, then they had been sentenced to jail for a year for contempt of Congress. I don't recall what Fast was.

Mr. Fuller: What was Dennis?

Mr. Konigsberg: That was also contempt as I recall, before the Un-American Committee. I think you are thinking of the United States vs. Dennis. That wasn't the case.

Mr. Fuller: I am not thinking of anything.

Mr. Konigsberg: This, as I recall it, was a contempt situation before the Un-American Committee of the House.

Mr. Fuller: Dennis was ultimately convicted of a crime?

Mr. Konigsberg: Later, I think.

Mr. Fuller: Is it your present position that Dennis should be freed from that conviction?

Mr. Konigsberg: Again you are venturing into the realm of belief, what I believe today. Anything I wrote, if it proves to be what I wrote, I wrote what I believed to be the truth at the time. I never wrote anything I didn't believe to be true. I think if you ask my opinion today that

is another matter. You are not asking something about what I did as a matter of public record.

Mr. Fuller: Is it your position the Committee isn't entitled to determine whether or not an opinion or an attitude [fol. 183] or an action which you may have done in the past—that these things may not be a subject of inquiry to determine whether or not they still continue?

Mr. Konigsberg: I don't follow that.

Mr. Mosk: May I interpose an objection? I think that the questions which you are asking with relation to the present beliefs of the applicant are improper questions under the authority of the Committee and the laws of the United States. The standards set for good moral character as determined by the courts of this state have never included as a basis for determination that a person is not of good moral character by reason of any beliefs he might have, certainly not any beliefs in the political realm.

Every case recorded in the State of California has been a case involving a commission of some crime by the applicant or by the attorney, and it is, I think, Mr. Konigsberg's position that making an inquiry into this realm, you are going beyond the scope of the authority of the Committee and beyond the law as has been determined by the Supreme Court in past cases.

Mr. Fuller: I think we understand your position. I think you should know that quite possibly the Committee doesn't agree with that. I believe that once having taken a position on a matter publicly he may have waived his privilege (if he had any) and we are entitled to know whether or not [fol. 184] that condition continues. I won't argue the matter with you now, but I want you to understand that we understand your position and we want to state our position, at least in a way.

Mr. Mosk: May I comment briefly on that? There is a great distinction between a statement which may have been made in a newspaper, which is a matter of record, of course, but I think that even assuming that this is the case, that it is a matter of record and does come into the record, it is our position that this cannot be a basis. Even these statements which are statements of belief cannot be a basis

upon which determination of the fitness within the realm of moral character can be determined.

Mr. Konigsberg: May I ask this question, Mr. Chairman: Is it the Committee's position (and I would sincerely like to know) that it has the power to ask such a question and that questions relating to opinions do have a bearing on the applicant's moral character?

Mr. Fuller: I don't want to put it on that basis. It is my position, not necessarily the entire Committee's position, that we have a rather general scope of inquiry to determine whether an applicant tells the truth, for one thing. I think that is a factor in determining whether or not he is morally qualified. He may state that he is not now a Communist, if he has been a Communist in the past, and if we believe he [fol. 185] is telling the truth, that will have a bearing on our determination. I think we have the right to test the veracity of the applicant to the extent that if he denies that, I am influenced in the final conclusion. I will come to, that I haven't determined yet. I do think that the applicant who wishes to afford us the facilities for determining his moral character to the utmost, should permit us to test his veracity.

Mr. Konigsberg: Mr. Chairman, in all sincerity I have attempted to show in my initial analysis that under Section 6064.1, that I think sets the limit to any inquiry that any body of Examiners has. Once you ask "Do you now?", does that person advocate the overthrow by force, violence, or other unconstitutional means, and he answers, as I have answered, that he does not, you cannot ask any questions about his opinions. You are not empowered to ask any questions. There is some question as I pointed out in my statement whether this is constitutional even to allow it to this extent.

Mr. Fuller: Do I understand that it is your position, and I think I understand your position, that we should not go ahead and find out whatever information we can obtain in order to make the best decision?

Mr. Konigsberg: I make this point which I did not make before that I don't think constitutional such action, to [fol. 186] draw inferences of the truth or falsity of any statements based on the position (whether of the First or any other Amendment) which the applicant takes. For the

Bar to maintain the position, as the Chairman is doing, that it does have the right to ask about my opinions (at least as he is doing this afternoon), as I pointed out these opinions and beliefs which have been expressed coincide with those of prominent leaders of the Bar, which they are expressing today, and the ultimate logic of such a position, then, would be that Dean Griswold and Justices Douglas and Black could not practice law in the state of California. I am wondering if that is the position the Committee wishes to take.

Mr. Fuller: There is no position of the Committee. I am only one member. We are conducting an impartial examination.

To return to the editorial entitled "Court of Last Resort" dated May 11, 1950, there is this language:

"When the Supreme Court of these beknighted states can refuse to review the case of the Hollywood Ten thus making that high tribunal an integral part of the cold war machine directed against the American people—then the enemies of democracy have indeed won a major victory. When the commanders of the last legal bulwark of our liberties sell out to the enemy, then the fascists have gone far, much farther than most people think.

[fol. 187]. "He who cannot see the dangerous, damnable parallel to what happened in Germany is willfully blind."

You made that statement?

Mr. Konigsberg: If that is a correct copy of what I wrote, I made the statement at that time, yes.

Mr. Fuller: And would you make that same statement today?

Mr. Konigsberg: Again I give you the answer that because of the guarantees of the freedom of speech, the freedom of the press, under the First Amendment, the Committee is not empowered to inquire into what I think or say today.

Mr. Fuller: Have you any evidence to support your statement that the Supreme Court sold out to the enemy?

Mr. Konigsberg: I think I covered that in what I said in answer to your previous question.

Mr. Fuller: I don't believe it is any evidence to support that statement.

Mr. Konigsberg: Are you asking me if I have any evidence now?

Mr. Fuller: Did you have any evidence then?

Mr. Konigsberg: I think the same answer applies.

Mr. Fuller: What is the answer?

Mr. Konigsberg: The Committee is not empowered to ask me questions relating to what I thought or the opinions I expressed.

[fol. 188] Mr. Fuller: This is a statement of fact. You made a statement of fact. You had something to base that on?

Mr. Konigsberg: What I had then, or what I knew then or had then I am not in a position to recall. Whether I believe it now, I think my previous answer applies. Is the Committee suggesting that any criticisms of any governmental institutions makes one morally unfit to practice law?

Mr. Fuller: I am suggesting this personally, that anyone who is to become an officer of the Court should not, without very good evidence, accuse the judiciary, particularly the Supreme Court of the United States of being subject to bribes and treachery and selling out.

Mr. Konigsberg: Mr. Chairman, the Supreme Court as well as other courts have been accused in many publications.

Mr. Fuller: You are speaking of the entire Supreme Court, you are not talking about any individual, but the institution as such?

Mr. Konigsberg: I am referring to the Supreme Court.

Mr. Fuller: Do you believe that it is possible for the present Supreme Court to sell out?

Mr. Konigsberg: What I think was answered by my [fol. 189] previous answer to the question, when I answered the Committee that legal scholars about the country are making comments similar to this.

Mr. Fuller: They disagree with the results. Can you quote any others to me who accused the court of selling out or being subject to bribery?

Mr. Konigsberg: I don't know whether that is a fair inference of what I said.

Mr. Fuller: What inference should we draw?

Mr. Konigsberg: I don't know. You may draw whatever inference you feel competent to do.

Mr. Fuller: That is what I thought.

A lady by the name of Bennett testified here. You heard her testimony. Is there any part of that testimony you wish to deny?

Mr. Konigsberg: Well, again, Mr. Chairman, that is the same question. That is a question relating to opinions, beliefs, political affiliations.

Mr. Fuller: It has nothing to do with beliefs.

Mr. Konigsberg: It certainly is related to political organizations, political activity, however you choose to describe it.

Mr. Fuller: Do you want to read it again?

Mr. Konigsberg: I recall it.

Mr. Fuller: Do you wish to deny any part?

[fol. 190] Mr. Konigsberg: I wish to say that any questions relating to such political affiliation, which the testimony dealt with . . .

Mr. Fuller: You refuse to affirm or deny her testimony?

Mr. Konigsberg: The Committee is not empowered to ask with regard to political affiliations or that type . . .

Mr. Fuller: I am calling your attention to the fact part of it is not connected with political beliefs or associations.

Mr. Konigsberg: Which part?

Mr. Fuller: You are free to read it.

Mr. Konigsberg: If you wish, I shall be glad to.

Mr. Fuller: If you want you may either affirm or deny anything if you need to do that. We want to afford you the privilege. (Witness read the testimony referred to)

Mr. Konigsberg: Mr. Chairman, I think I would recall all the questions relating to me. She answered a number of questions not relating to me. All relating to me are based on a matter of political affiliation or opinion and political association and I think that is amply covered under the protection of the First Amendment as I referred to a moment ago. The Committee's rights to inquire about this matter are limited to the present personal advocacy of the overthrow by force or violence or other means as set forth in 6064.1.

Mr. Fuller: If you were called on to bear arms against

a communist country on behalf of the United States would you do so?

Mr. Konigsberg: I think that question, too, is covered under the guarantees mentioned a moment ago. I would say, certainly, if my country called me to arms; as I enlisted before, I would certainly serve in the armed forces.

Mr. Fuller: Regardless of the enemy?

Mr. Konigsberg: Regardless of the enemy.

Mr. Fuller: That is all for the moment. Does some member of the Committee have any questions?

Mr. O'Donnell: Are you a member of the Communist party now?

Mr. Konigsberg: How does that differ from the questions asked before?

Mr. O'Donnell: I would just like you to answer it.

Mr. Konigsberg: The answer is the same I would give. The Committee is not empowered to inquire any more than they may inquire whether I am an Elk, a Freemason, a Democrat or a Republican. It might become incriminating to be a member of the Democratic party today, like saying all Democrats are traitors.

[fol. 192] Mr. O'Donnell: Have you ever been a member?

Mr. Konigsberg: I would give the same answer.

Mr. O'Donnell: You refuse to say whether you now are?

Mr. Konigsberg: I refuse on the ground that the Committee is not empowered to question anyone about political opinions or affiliations, whether past affiliations or present ones. I say this can have no bearing on moral qualifications to practice law, unless the Committee is prepared, as I said in my statement, to take the position that it is now a crime in California to have opinions different than general popular opinions or conforming opinions.

Mr. Fuller: Of course, the Committee takes the position it is doing so affirmatively, when it goes before the Supreme Court and states you have the proper moral character and we feel we have the right to inquire very deeply into that because it is an affirmative obligation on our part.

Mr. Konigsberg: I think, Mr. Chairman, on that point the court has said—

Mr. Fuller: We may be wrong. The Supreme Court may tell us otherwise but that is the way it appears at the moment.

Mr. Konigsberg: I think in taking such a position the Committee is, as I have said clearly I think, doing what I [fol. 193] consider to be an unconstitutional, wrong or illegal act—not criminal. I mean the constitution doesn't permit such conduct on the part of public bodies, or if I may express it this way, the Committee's stand with me. In any defense that is constitutional rights as applied to everyone.

The other day in the Legal Journal there appeared a clipping—

Mr. Whitmore: What paper?

Mr. Konigsberg: The Los Angeles Daily Journal, I should say, of February 25, 1954. I meant to refer to this when I was reading before. This is a commendable service that the State Bar is publishing under Legal Problems of the Profession. This relates to various constitutional privileges—you may see it, if you wish, Mr. Chairman—and the lawyers are attempting to inform the public (potential clients, I presume) and providing a source which they may rely on. Several days before that, Mr. Jameson, President of the American Bar Association, the national president, made the statement that—one sentence is apropos on this point.

In the Los Angeles Daily Journal of January 22, 1954, the President of the American Bar Association, Mr. Jameson, said "We recognize that all lawyers as citizens retain all constitutional rights, including the right to refuse to testify if their testimony might tend to incriminate them. [fol. 194] Asserting that right discloses difficulties for the practice of law."

I am not invoking—nor have I at any of these hearings—the Fifth Amendment. The point I am making is that it is inconsistent for the President of the Bar Association to make this statement when the local Bar comes out with a commendable public relations effort to educate the people to their rights under the constitution in direct contradiction.

I don't think you can deny the position taken by the State Bar in this article and similar articles and by the National Bar. They say, "Sure, you have the right, but if you invoke the right you won't make a living." This has profound implications in any democratic society. This is what the

totalitarians did. They said, "Sure, do it, but if you do we will deny you a living."

I think this is wrong. Isn't it contradictory to tell a citizen "You have the right" but he will lose his livelihood and his life practically speaking?

Mr. Fuller: You made the statement you have nowhere in these proceedings invoked the Fifth Amendment.

Mr. Konigsberg: That is right.

Mr. Fuller: You have been consistently invoking the First Amendment.

Mr. Mosk: May I for the record note that the witness was [fol. 195] referring to the Los Angeles Daily Journal of February 25, 1954, an article entitled "Law in Action" and at the bottom it says "The State Bar of California offers this column for your information so that you may know more about how to act under our laws."

The following two paragraphs appear in that article:

"In a trial the judge decides what evidence can be heard. He applies the rules of evidence so that truth, relevant truth, may come out in court to decide guilt or innocence, liability or not."

And a later paragraph:

"The court cannot make you testify against yourself. This is written into our Bill of Rights as a protection against tyrants and torture."

Those are quotations from the Exhibit to which the witness referred and was reading from.

Mr. William M. Maxfield: Are you offering to put the whole article in?

Mr. Mosk: Yes, we will offer it. (The document was then handed to the Chairman)

Mr. Konigsberg: I would appreciate it very much if I might have a minute to comment on something. I did not include this in the original presentation so it wouldn't be too long but it is very much the thing you are saying now—three paragraphs.

In my original outline which I was going to offer I en- [fol. 196] titled this "Duty of Bar Examiners" and I think that is what we are considering although it may be my misconception.

In discharging the duty of determining the applicant's moral character, the Committee of Bar Examiners has the

correlative duty of upholding the applicant's constitutional rights. Justice Jackson has said (36 ABA Journal 697) that lawyers are "the chief instrument by which society applies its laws and its sanctions to the individual"; and further, they serve under a "guardianship of our traditional liberties and our legal institutions".

President Eisenhower recently observed that "the role of the lawyer in the daily life of our nation and communities is vital to our democracy" and that "the lawyer is the guardian of individual liberties granted under our Constitution and their defense is one of the main objectives of the American Bar Association." (Quoted by William J. Jameson in the Los Angeles Daily Journal 1-22-54)

If this is so, and I believe it is so, it seems to me that the role of the lawyer today in America in what I think you will all admit is a very critical period for our democratic society, is a profound one for good or bad and I don't think I have to elaborately document this point, but I quote this one: Justice Douglas expressed the opinion that "There has probably not been a period of greater intolerance [fol. 197] since than we witness today. The Communist threat inside the country has been magnified and exalted far beyond its realities. Fear runs rampant." This is from the New York Times Magazine of February 13, 1952.

It seems to me the very disturbed situation in which our country exists today offers a really great opportunity for the legal profession to help in defending our democratic rights, and one way we can do this is for a group of lawyers to do it, such as a Committee of Bar Examiners who certainly, when they were admitted to the Bar, swore to uphold the constitution and to refrain from actions which might be considered unconstitutional.

I think it is general knowledge that the legal profession really had its beginnings in the centuries old struggle for preservation of human rights. Much of the progress in those centuries has been due to the efforts of lawyers, advocates and barristers down through the years.

This central issue of our time, whether the democratic society shall survive, is in a sense focused in cases such as this. This is where democracy is defended, in little hearings, in meetings, in conversations, not on the greater stage of Congress or the state legislative body.

How those rights are developed, and enhanced in the courtroom or the hearing room is the front line of defense [fol. 198] of democratic rights and lawyers play the key role. This Committee in this instance and in similar instances is playing the key role. What it does or fails to do will contribute to the undermining of democratic rights or upholding them.

Mr. O'Donnell: Do you think we as Bar Examiners would be upholding that obligation if we certified a member of the Communist party to the Supreme Court for admission?

Mr. Konigsberg: Again I think my answer would be similar to the way in which I answered before, that is in the realm of ideas, opinions and such and has no bearing on the moral qualifications to practice law.

Mr. Fuller: You give a great deal of time to expressing your opinions on a great many subjects. Right now you take one side of the dilemma, yet when you are asked a question on the other side of the dilemma, you never answer.

Mr. Konigsberg: I don't think you can say I have taken that position all through—the transcript of all the hearings will show these opinions have no bearing on my moral qualifications to practice law. On the major premise I have answered directly. You said a moment ago that I was giving answers based on my constitutional guarantees. There is no contradiction on this point. I am not expressing opinions here, I am analyzing in effect and in form my own [fol. 199] views why I think the action of the Subcommittee of Bar Examiners was correct or incorrect.

This is what I am called upon to do in making an appeal for reversal. I am not offering opinions which have no bearing on the issue. Certainly where it bears on for what reasons I think the action correct or incorrect, I am compelled to take this position. Again, in answer directly to the point you are making, my conception of my duties as a citizen, whether in regard to applying for bar membership or anything else, tells me that I can't join any action I consider unconstitutional or undemocratic, call it what you will. I think you are not empowered to inquire into a man's beliefs any more than you can ask whether he is a Christian Scientist or a Seventh Day Adventist or Jewish

or anything else. It has no bearing on his qualifications to practice law.

The Committee has established these qualifications in its questions when you register and when you have passed a law school examination in other questions dealing with moral character relating to acts of a criminal nature, not academic points. Unless every case in California—not every case, but I have searched the total record involving disbarment or suspension from the bar, and if it isn't based on an act of a criminal nature or moral turpitude there is no action against me, no legally recognizable grounds against me, no justifiable grounds unless the Committee [fol. 200] is prepared to say that having opinions different than those which the Committee approves is reason for calling a person immoral. Once you do that it is inevitable that the next step denies persons admission to the bar for unpopular beliefs, then proceeds to the disbarment of those who have such opinions, then proceeds to deny counsel to others of similar opinions. This is the inevitable trend. It is happening in other parts of the country. I am not guessing, others have been disbarred for similar reasons. In doing their duty under the law as it is, I think the action of the Subcommittee was wrong. I don't say it was done purposely, it is their interpretation of their powers under the law, but as it exists today that is simply that you are empowered to ask do I, personally, advocate the overthrow by force or violence or other unconstitutional means and at the time I say "No" you can't ask any further political questions.

Mr. Fuller: I don't think you should go away with any conception that the Committee agrees with your contention that it is limited by the scope of the questions in the application. That is the starting point as far as the Committee is concerned. We couldn't put all the questions in this which might occur in a given situation.

I don't want you to be misled on that or go away thinking that the fact that four or five cases

[fol. 201] have gone to the Supreme Court in given situations precludes other situations from arising. That could be a happenstance.

Mr. Konigsberg: There are a dozen cases in California alone, not four or five.

Mr. Fuller: I do not feel limited in case a new situation arises which comes within the scope of the inquiry. It is just an accident that the field happens to have limited itself to the cases which are now reported. A new case could come up tomorrow.

Mr. Mosk: If I may say this, in the brief I submitted to the Subcommittee, I believed I cited an Idaho case which I felt was the only one which even approached the present situation, in which, it must have been the Idaho Supreme Court as I recall reversed a determination by the Committee refusing admittance, or perhaps it was disbarring for membership in the I.W.W. at the conclusion of the first world war.

I think, if I may say this word in summary with relation to the issue we have here, I think I expressed it pretty much at the last hearing. It is all in the record but I do feel that the basic issue this Committee is faced with is to determine for itself whether it is prepared to say that it may make a determination of moral fitness on the basis of the beliefs or opinions of the applicant and I think that the question [fol. 202] resolves itself to this fundamental question, because as soon as you start making gradations within beliefs—that this belief is satisfactory, this belief is not—I say then that the Committee of Bar Examiners must be setting itself up as the judge of what beliefs are correct and what beliefs are incorrect.

No matter how you twist it or turn it, in approaching the Konigsberg case this is the fundamental issue that must be decided, whether a man's beliefs must be a basis for determining a good moral character.

I think this is a fortunate case to be before the Committee because they are dealing with a mature man who commenced the study of law at the age of thirty-nine so he already had a full record of community activity behind him and he was in a position to present before this Committee affirmative evidence of good moral character, something I suspect is most difficult with the average twenty-one or twenty-two year old applicant who has had no activity in the community.

Here we have attempted to approach this case, at least

from the point where I began consulting in regard to it; from that point of view and we are prepared to make to this Committee an affirmative showing of good moral character. I think we have done that with the list of letters and the caliber and quality of the people who came before this Committee in effect through their letters and we were privileged to [fol. 203] bring many of these people before the Committee but it was felt that the time consumed by bringing thirty-six or more persons before the Committee would work an undue hardship on everyone concerned.

Here we have an affirmative showing of thirty-six persons scattered throughout his adult life and we consciously did this; we picked people who knew him in the early period, the middle period and who knew him now. All of these people have spoken in the most glowing terms of his good moral character and their belief that he would make, by reason of his moral character, a good attorney.

So, I submit that under these circumstances the issues must be faced squarely by this Committee in making its determination. Are you prepared to say that by reason of a person's opinions, beliefs and associations he may be determined of bad moral character and a person you cannot certify to the Supreme Court?

Mr. Whitmore: It is not your contention, is it, Mr. Königsberg, that the only basis which the Committee may rely on in determining whether or not it can certify you under the provisions of 6064.1 is by asking you the questions and getting a yes or no answer. It is not your position that that is the extent of the right of this body in making its determination under 6064.1?

Mr. Königsberg: In essence, that is it. My interpretation [fol. 204] of that code section is simply that it sets the limit as to whatever questions relating to opinion—because that is obviously a political issue—there may be asked by the Bar Examiners. It sets the limit as I interpret it. I may be wrong, as I think the Subcommittee is wrong; because of the history of this act as I have related it the Committee can only ask: "Do you now personally advocate the overthrow of the government of the United States or of this State by force or violence or other unconstitutional means" and if I say "No", "Yes" or whatever it may be, that is

as far as you can go; that is without raising the question on this point (which I don't think is pertinent) as to whether that is even constitutional under the First Amendment.

Mr. Whitmore: You are saying that the Committee is precluded under Section 6064.1 from considering acts or omissions of yours in the past with respect to that problem?

Mr. Konigsberg: Yes, I think so. I am saying they can only ask do I advocate the overthrow by force or violence or other means.

Mr. Whitmore: You are contending that we are bound by your answer of yes or no which you give.

Mr. Konigsberg: You can decide for yourselves whether I am telling the truth. You can use any means of determining the truth. You don't have to accept any individual's [fol. 205] yes or no answer as the truth. I think that is understood.

Mr. Maxfield: Doesn't your answer right there defeat the only purpose if we can cross examine as to the truth or falseness of that statement? Why can't—

Mr. Konigsberg: I didn't say you could cross examine me as to the truthfulness. The question as I understand it was whether the Committee couldn't consider other things, records, past acts.

Mr. Whitmore: Acts or omissions.

Mr. Konigsberg: Anything in my record to evaluate whether I am telling the truth, certainly.

Mr. Maxfield: The general principles of cross examination testing the veracity of a statement, those you know under the rules of evidence are pretty broad. Do you deny us the right to ask these questions for that purpose?

Mr. Konigsberg: Again under the rules of evidence there might be many items of hearsay, fact or whatever it might be, which the court would like to know but the court prevents the prosecution or the other side from introducing because of a deep-seated public policy or other evidentiary rule or the First Amendment. The rule of search and seizure is something else of that nature. The information might be pertinent but the court says that the results of such act, as established over the years, may not be asked or introduced.

[fol. 206] It is my contention as I tried to make clear—(it might be unconstitutional, I am not questioning that now)

—it may only go as far as this law permits you to go. The history of that act shows that the Legislature tried to do other things but failed to because it failed of passage. And a person can be asked (such people as myself) "Do you?" than the Committee must determine and evaluate as to the truth by what is in the individual's record.

Mr. Maxfield: We are not entitled to an evaluation of that truth or in an effort to evaluate it to cross-examine you with respect to present or past associations?

Mr. Konigsberg: That is right. That is my interpretation.

Mr. Arthur E. Freston: May I ask a question, Mr. Konigsberg? As I have listened at these various hearings and you have emphasized that we may not inquire into your beliefs, frankly, I am confused because when you were asked the question if you were a philosophical Communist as I recall it you had no hesitancy in categorically answering the question "no".

Mr. Konigsberg: That is right. I corrected that at the following hearing. I said I was under tension and didn't realize this was the same type of question. I shouldn't have answered the question Mr. Black asked. If I were asked again I would give the answer based on the First Amendment [fol. 207] ment. You appreciate very well that under these circumstances an individual doesn't think clearly and accurately. I gave the wrong answer to that question. Based on the position I have taken all the way through it was error for me to answer that question. I corrected it at the next hearing.

Mr. Freston: Now, I understand, if I am right, if I have understood you correctly, that you have stated a number of times here this afternoon that you have found no case in California which would go to support—

Mr. Konigsberg: In which I found, other than those in which some act of criminal nature or moral turpitude was the basis of the action of the State Bar Examiners or the court, there was refusal to admit, or disbarment or suspension. I found no such case.

Mr. Freston: Have you read the Federal case of Orloff 87 Law Edition related to the efforts of a doctor to obtain a commission in the United States Army? He had refused

to answer the question "Are you or have you ever been a member of the Communist party?"

Mr. Konigsberg: No, I didn't read that case, when I researched the cases I didn't come across it.

Mr. Fuller: Communism may not have been as important in those days as now. This case deals with this general question. You are invited to read it and if, after reading it you have anything you wish to do about changing your testimony we will give you an opportunity [fol. 208] to do so.

Mr. Freston: I am sure I understand you then. You were differentiating merely the field of your research when you were careful to phrase it that you found no case in California, you were restricting your answer to only the field of authorities you searched, namely, the State of California.

Mr. Konigsberg: Yes, California.

Mr. Fuller: Unless someone else has something—

Mr. O'Donnell: There was some suggestion that the Subcommittee was not fair at the previous hearings.

Mr. Mosk: May I interrupt immediately. There was no inference in any comments made by Mr. Konigsberg or myself. They were solely directed to the decision of the Subcommittee and our disagreement with the ultimate results. The Committee was absolutely fair and treated Mr. Konigsberg and myself with the utmost degree of fairness and impartiality. We have no complaints about the Subcommittee.

Mr. O'Donnell: You received copies of the transcript, one for the September 25th hearing, and another for December 9, 1953, and then a third one for January 27, 1954?

Mr. Konigsberg: We received copies.

Mr. Mosk: We received copies of all the transcripts and the fullest cooperation. We have no complaint whatever, only with the decision.

[fol. 209] Mr. O'Donnell: On the first hearing there were only two members of the Committee as it is now constituted.

Mr. Whitmore: Four were present, two participated.

Mr. O'Donnell: And as I understand it, you are willing to submit this application for admission on the basis of the transcripts in the three prior hearings and on the basis

of the present hearing to the Committee as it is now constituted?

Mr. Whitmore: Together with the Exhibits introduced today.

Mr. Mosk: Yes.

Mr. O'Donnell: I don't know if it is necessary for the record but perhaps we should identify with greater certainty the application form that Mr. Konigsberg referred to, his first application. He handed the application to me to look at and I intended to follow up by stating it was an application dated—

Mr. Fuller: We have the date in the record.

Mr. O'Donnell: —December 4, 1950 his application is dated and it was filed with the Committee on December 5, 1950.

Mr. Fuller: It is now marked Committee's Exhibit No. 4. This is the originating application for his law study.

[fol. 210] Mr. O'Donnell: Do you feel you have had a complete hearing? Is there anything more you would like to say?

Mr. Konigsberg: Yes, I think so.

Mr. Mosk: Yes, I think the Committee has been most fair, courteous and patient with the presentation. We hope, however, and submit that the decision of the Subcommittee should be reversed and Mr. Konigsberg should be certified for admission to the Bar.

Mr. O'Donnell: Do you wish to file any more authorities or any further Memorandum, Mr. Mosk? We have the one you submitted at the January 27th hearing.

Mr. Mosk: May I call the office on Monday and give an answer to that question? My present inclination is not, but I might like perhaps—

Mr. Fuller: You will be given all the time you need to file anything you want.

Mr. Mosk: My present inclination is that we have said everything we should have said.

Mr. O'Donnell: I think the Respondent and the Chairman at the same time should examine this Orloff case.

Mr. Fuller: And give your comments on that. (To Mr. Mosk)

Mr. Wright: I would be interested as I indicated to Mr.

Mosk at one of the earlier hearings. This is not the first time the Orloff case has been mentioned.

[fol. 211] Mr. Konigsberg: In this procedure it is.

Mr. Mosk: I think I recollect—

Mr. Wright: I may be in error.

Mr. Konigsberg: You may have been thinking about it and didn't mention it.

Mr. Mosk: I will be glad to comment on it and submit a Memorandum. I am familiar with it generally but I would want to re-read it before I comment on it.

Mr. Fuller: I think there is an article by Chaffee or something on this subject too, which you might look at.

Mr. Konigsberg: A recent article?

Mr. Fuller: It was put out here—I saw it somewhere—by Chaffee on this subject of lawyers. I can't identify it at the moment, but I have seen it.

Mr. Mosk: I will be glad to submit a further Memorandum, I think perhaps one day next week.

Mr. Fuller: We would like to have all the guidance you want to give us.

Mr. Mosk: Thank you very much.

Mr. Fuller: The matter will stand submitted subject to Mr. Mosk's right to send in anything he wants and if you have anything else you can send it in. The matter will be re-opened if necessary.

Mr. Mosk: I have a client who obviously speaks well for himself which is always a pleasure.

Whereupon the witness was excused...

[fols. 212-213] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 214]

EXHIBIT "C" TO PETITION..

The Committee of Bar Examiners
Of The State Bar of California

February 8, 1954

Registered Mail

To: Raphael Konigsberg
2446 Echo Park Avenue
Los Angeles 26, California

and

Edward Mosk, Esq., his Attorney
6305 Yucca Street, Room 254
Hollywood 28, California.

The Southern Subcommittee of the Committee of Bar Examiners has reviewed the record in the matter of your application for certification to the Supreme Court of this State for admission to practice law. As a general applicant you are required, among other things, to meet the requirements of Section 6060(e) of the Business and Professions Code and the Rules Regulating Admission to Practice law in California, before this Committee can take the affirmative step of certifying you to the Supreme Court as being possessed of good moral character.

You were orally examined on September 25 and December 9, 1953, and you and your counsel appeared before the Southern Subcommittee on January 27, 1954. Newspaper articles, letters, and other documentary evidence were introduced.

It is the opinion of the Southern Subcommittee that the record in this proceeding does not warrant that it certify to the Supreme Court that you are possessed of the good moral character required.

Your application is denied.

You are entitled, in accordance with Section 5 of the Rules Regulating Admission to Practice Law in California, copy of which is enclosed, to have your application reviewed and determined by the Committee, upon filing, within ten (10)

[fols. 215-216] days after notification of the Subcommittee's action, a written application therefor.

For the Committee of Bar Examiners:

/s/ Alma Stayton
Alma Stayton,
Assistant Secretary

Enclosure. See page 335 for "Answer of Respondents to Petition to Review, Rule 59 (b), Rules on Appeal, Denial of Application for Certificate the Supreme Court for Admission to Practice Law."

[fol. 217] IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

KONIGSBERG

v.

STATE BAR OF CALIFORNIA

ORDER DENYING PETITION FOR WRIT OF REVIEW—

Filed April 20, 1955

Petition for writ of review denied.

Gibson, C. J., Carter, J. and Traynor, J. are of the opinion the writ should issue.

(File endorsement omitted.)

Gibson, Chief Justice.

[fol. 217a] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 217b] Supreme Court of the United States

Order Allowing Certiorari. Filed May 21, 1956

The petition herein for a writ of certiorari to the Supreme Court of the State of California is granted.

In addition to the merits, counsel are invited to consider,

in their briefs and upon oral argument, the following questions relating to the jurisdiction of this Court:

(1) Were petitioner's claims under the United States Constitution duly raised before the Supreme Court of California?

(2) Was the Supreme Court of California's denial of a petition for a writ of review merely a refusal by that court to exercise its discretionary jurisdiction or is it to be deemed a disposition, "in the nature of a review," *Salot v. State Bar*, 3 Cal. 2d 615, 617, and as such a final judgment within the meaning of 28 U.S.C. § 1257?

(3) Assuming the latter, was the determination of the Supreme Court of California based upon a rejection of claims arising under the Fourteenth Amendment of the Constitution of the United States, and more particularly, upon an evaluation of the constitutional significance of the evidence summarized under "1" on page 5 through the top of page 8 of the brief filed by the respondents on December 8, 1955 in opposition to the petition for the writ of certiorari herein?

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

May 21, 1956

Committee's Exhibit No. 1 consists of the following articles written by Raphael Konigsberg during 1950-1951 and published in the *California Eagle*:

[fol. 218] COMMITTEE'S EXHIBIT No. 1

AS FREE AS MONEY

One of the great writers of our time, Anatole France—in discussing the claim that equality of opportunity existed for all in French society—declared: "Yes, the rich and the poor have an equal privilege to sleep under the bridge."

The same verdict can be rendered on the claim to free elections in America today, and always. The rich and the poor have the privilege of putting forward their candidates and of campaigning for them, but—in practice the

money power of the nation has subverted the political freedom and the goals of democratic elections.

The corporations monopolize the elections, and legislatures, as effectively as they do the nation's economic life. There are free elections in our country to about the same degree that there is free enterprise. There can be no free competition where one side is so powerful that it can prevent the other side from competing.

The truth and wisdom of FDR's conclusion on the relation of monopoly to political power is borne out tragically by his country's fate since his death. Remember how he warned us that if we allow economic monopoly to become so powerful that it controls the nation's political life we will have fascism?

What we are discussing at this point is equality of opportunity in the operation of the election machinery—in the practical political job of selecting and electing candidates—and not the freedom of individuals to vote. In that sense, there are no free elections in the U.S.—since you simply can't conduct an effective campaign if you don't have large sums of money. The people and their representatives just don't have that kind of money.

But the unavailability of campaign funds for the people's representatives is only one part of the problem. The other is that by their control of the country's press, radio, lecture halls, et cetera, the money power (the nation's enemy) prevents the democratic forces from getting their message to the people.

The Golden Curtain

Talk about an Iron curtain! The Republican-Democratic control of the nation's gold is really an impenetrable curtain shutting off the vast majority of voters from knowledge of the facts of political and economic life in America.

The economic royalists not only have all the money they need for newspaper space and radio time—but they control these media—their owners are part and parcel of the money power—and refuse to sell space and time to the people's candidates when we are able to scrape a few dollars together.

This is what they call equality of opportunity in the land of free enterprise! Tie your opponent's arms—put

weights on his feet—blind him and you're sure to win. That's the corporations' idea of a fair fight. From their point of view, though, they're right—that's the only way they can win.

Only by keeping the people from having a fair chance to win can they retain power. If the people had a fair chance, if there really existed free elections, the anti-democratic gang would not control our economic or political life. And they know and fear it.

That is why even their practically complete control of the press and radio and their kept candidates doesn't give them sufficient security. They must also resort to poisoning the minds of the people, make them afraid to exercise a free vote, condition them to support their own enemy's candidates and programs.

That is the real reason for the disloyal oath hysteria, the red-baiting and witch-hunting. As Carey McWilliams so ably describes it in his latest book, "Witch Hunt," the rulers of America are trying "to create the dream of every politician and demagogue—a political audience made up entirely of those with conditioned reflexes."

In this respect, too, then, there are no free elections in our land. But this very desperation of the enemy, this compelling necessity to buy elections and men's minds, is glaring proof of his weakness, not of his power. He is afraid of an enlightened electorate. And well he might be. Such an electorate—which all the decent men and women in America are helping to create—will be his undoing and the nation's salvation.

[fol. 219]

Raphael Konigsberg
TIME FOR COURAGE

Part III

February 2, 1951

In previous articles we have emphasized that opposition to tyranny has always been the greater loyalty in every nation—and that today this means that we who want to save American democracy, and improve it, must fight against the advances of fascism.

How then, are we to fight—we, the average citizens, the parents, workers, artists of America? What specifically can we do?

It is doubtful that anyone can furnish a complete and

detailed blueprint which will be the perfect guide for each responsible citizen. And the best that can be done in a discussion such as this is to offer some general suggestions—which each person can adapt to his own interests and capacities.

To begin with, there is much we can learn from our country's true history, and that of other countries—particularly the fact that in this nation, as elsewhere, it is the common people who have been the source of its power and riches. (This will be a source of pride and strength for us.) We should read such books as Shirley Graham's biography of Frederick Douglas, Howard Fast's historical novels, John Howard Lawson's "The Hidden Heritage."

We must also arm ourselves with the truth about the world's daily events. This will be found only in such publications as the California Eagle, Peoples' World, National Guardian, and the new Negro monthly, "Freedom." And in the radio programs of an Averill Berman.

Reading and study are very important, but we can't devote all our time to it. There's much urgent work to be done . . . the neverending tasks of making democracy work.

Work to Be Done

Whatever our personal inclinations and skills may be, long experience has proved that the most effective way for any citizen to discharge his duties is to do so in an organized manner, joining his strength and time to that of his neighbors. In this way we all obtain the greatest returns from our investment.

Today this means participating in the work of those organizations fighting for such democratic programs as FEPC and peace . . . organizations like the NAACP, the Independent Progressive Party, the Civil Rights Congress.

True, many of us are not organizationally-minded. In that case, we can make important contributions to the common struggle by such activities as:

Writing the President and our Congressmen every time an important issue develops—like the fight to free the Lt. Gilberts, the Hollywood Ten, or to pass FEPC, or abolish Jimero, or bring our troops home from Korea—

Joining delegations to the city council to protest police

brutality, or fight for public housing, or to oppose universal military training—

Attending such meetings as those at which Charlotta Bass and Jackie Clark reported on the World Peace Congresses— from which we can get hope and courage—

Sending a spare quarter or dollar to such groups as the Civil Rights Congress which, in fighting for the lives of the Willie McGees and Martinsville Seven, is fighting for our lives.

Talking with our neighbors about the problems that disturb us—and urging them to demand rent control and reductions in the criminally high cost of living. Ask them, too, if they wouldn't rather form a peace committee now than mourn a slaughtered son?

Whatever form our contribution takes is a matter for each person and his conscience. There is, however, a basic philosophy, a foundation, on which we must all build our lives today:

1. Every American has a personal responsibility to assist in safeguarding American democracy, which means our liberties and lives. No one else will do it for us.

2. Every American who fails to do his part and thus allows fascism to win will be forever condemned, just as history condemns those Germans who (by not fighting back) allowed the Nazis to conquer, and bring tragedy to mankind.

3. No American can by his own efforts insure his security. No American can be secure unless all Americans are secure. Only by joining with our neighbors to secure peace and security for our nation can we expect to have any for ourselves and loved ones.

A program such as this promises the greatest reward of all—the assurance of a life well-lived.

[Vol. 220]

Reynold Rosenberg
NOW WHO'S UNPATRIOTIC? *See me 3/11/50*

A few days ago the U. S. Supreme Court announced a decision of the utmost importance to all Americans. The Court declared that it is unconstitutional to require any American to tell whether he is or has been a member of the Communist Party. Said Justice Black: "... the Constitution gives the witness the privilege of remaining silent. The

attempt by the court to compel (anyone) to testify runs counter to the Fifth Amendment . . ." No one can be forced to incriminate himself.

After all these dark and heart-breaking months of struggle against the undemocratic forces in our country, this decision is a ray of light and hope that perhaps some sanity is returning to our national councils. At last the people have gotten a break. . . .

For what the high Court is saying is that we who have been fighting our native fascists and quislings, the un-American committees and their hordes, have been right all along. And it is they who are wrong. We are the true patriots; they the subversive forces.

Justice demands that we recall again who are the fighters for freedom, and who its betrayers. On freedom's side are such good people as the Hollywood Ten, the Carl Marzanis, the members of the Progressive Party, the Joint Anti Fascist Refugee Committee, the Paul Robesons and the Howard Fast.

On the other side are the giant corporations, the McArthurs, the Trumans, the Nixons, the American Legions, Chambers of Commerce, and practically all the press, radio and movies.

But it was always thus. The economic royalists and their kept agents undermine democracy; the people safeguard and advance it.

Slowly, very painfully, the truth catches up with the facts, and the public learns the truth. The progressive forces have said all along that the loyalty oaths and witch-hunts are un-American—and now the Supreme Court has had to say so. It remains to be seen whether those who control our government, who demand that everyone else obey the law, will now obey a law they won't like. . . .

WHAT ABOUT KOREA?

Since the progressive forces of the U.S. have been proved right in a matter of such profound importance to all Americans as our constitutional liberties, isn't it possible that we are just as right with respect to other vital issues—for example, that U.S. intervention in Korea is wrong, that our whole foreign policy is wrong?

Is it not significant that those who initiated the loyalty oaths, the assaults on our liberties, also directed the assault on the liberties of the people of Korea and Asia? Isn't it likely that they are just as wrong in the Korean gamble as the Supreme Court says they are in their witchhunting? Whose opinions shall we have more confidence in now?

How long before events will give the decisive answer? What price will the American people yet have to pay in shame and suffering before the Progressives' position regarding our foreign policy is proved correct? Perhaps not too long—for there is evidence of growing uneasiness throughout the land, even in the ranks of the mighty corporations.

Wall Street isn't happy at the way things are going in the Far East. Its "white supremacy soul" has been badly damaged by the resistance of the Korean and Chinese people. And maybe its adding machines are telling the financial dictators that their attempts to subjugate the Asian people are costing more than they can hope to get back in profits?

Satisfaction with the Supreme Court decision, however, must not blind us to the Supreme Court's limitations in the present period. This is the same Court which refused to review the case of the Hollywood Ten. It's the same tribunal before which at this very moment a trial of ideas is being waged against certain American citizens, leaders of a political party.

We must reserve a full evaluation of the significance of the present decision until the Court acts in the latter case.

[fol. 221]

Raphael Kohnberg
NATIONAL CONTAINMENT

From the moment the White House-Wall Street Axis decreed that this nation's primary mission was to "contain world Communism" progressive forces have warned that the real objective was the destruction of American democracy. The announcement by the Axis that a state of national emergency exists is tragic confirmation of that warning.

For even a child can see that in clamping an emergency status on the country, it is the American people who are being contained; it is the promises of democracy that are being contained, not Communism. It is our living standards, our liberties, and lives, that are being further restricted.

The emergency proclamation provides the Axis with the pseudo-legal framework for riveting the police state shackles on us more firmly. It could be the next-to-the-last step before the fascists take over in all their evil power.

It is true that when the Republicans and Democrats revealed their program for the "containment of international Communism" they did have (and still do) as an important objective the domination of the economic and political resources of other nations. But in this they have been foredoomed to failure—by the achievements of the democratic peoples of China, Korea, Indo-China, East Europe.

The bipartisans did make limited (and temporary) gains in certain areas—but they were after much bigger game. Having failed in these global projects, they are compelled by the inner necessity of their depravity and their goal to turn on the people of their own country. That is the basic reason for the emergency.

Its proclamation at this time is evidence that the period of national containment has arrived—for it is the period of national desperation for the Axis. The enemies of American democracy are terror-stricken. They fear the wrath of a people betrayed. They are afraid that their treachery will be completely exposed and the people will demand an accounting.

And well might they be afraid—for from every cross-section of the people protests are arising. A West Virginia paper damns the continued invasion of Korea in an editorial entitled "This Is Murder." An Ohio manufacturer demands the impeachment of Truman. And a Herbert Hoover (for his own purposes) urges a stop to this program of disaster. While mothers everywhere are demanding the return of their sons from Korea.

Opiate for the People

Gen. Marshall asserts that the purpose of the national emergency is to give Americans a "psychological" shot-in-the-arm, to make them aware of their responsibilities. It would be far more correct to describe the purpose as being to inject a drug to deaden the awareness of what is

going on, to terrify the people into silence by threatening them with economic and political reprisals, and to blind them to the truth.

As regards the Negro people, it is doubtful that this national emergency will change their life radically. They have been living under emergency conditions for generations. Economically, socially, politically, their lives and security have been in a precarious state at all times. The blight of second-class citizenship, to which they have been and are subjected in this "bastion of Western civilization," is the status to which all other American citizens will be subjected—if they do not resist.

In a real sense one of the major reasons why all Americans who don't see eye to eye with the bipartisans are faced with second-class citizenship is because they permitted the exploiters of this great land to fasten it upon Negro-Americans. Had this been prevented, America would not now be in the condition it is; America would be a truly great nation in the forefront of the epochal struggle for peace and democracy—not in the leadership of the world's reactionary forces.

This is, indeed, a period of grave national emergency. No one in his right mind dare minimize the danger. But it is at the same time a period of unparalleled opportunity to put a stop to the betrayals by the rulers, to set America back on the path of brotherhood and peace.

This is the time to speak out and act! Write to the President. Write to your congressmen. Get all your friends to do so. Demand the reversal of the catastrophic domestic and foreign programs in which the bipartisans are engaged.

An ounce of courage now, while we can still speak out, can be decisive for our families, for our nation, for world peace!

Raphael Kenigsberg

[fol. 222] FREEDOM IN THE DAILY NEWS *January 4, 1951*

So much has been said and proved in recent years about the dishonesty of newspapers in these United States that it is almost inconceivable any grammar school graduate believes the myths about "freedom of the press." Certainly the four FDR elections proved that little respect Americans have for their newspapers.

What should give us cause for concern, however, is the fact that few of us recognize clearly the active part the press plays in the whole machinery of repression and destruction of our civil liberties. The press is not an innocent, impartial bystander in the struggle between democracy and fascism.

It is a fighting and willing participant in the subversion of American democracy—which it pretends to safeguard. (Something like a cobra “safeguarding” a lamb.)

A lesson in how the press is used to destroy free government is provided by the experience of the French people. In World War II France fell in less than a month to Nazi hordes. We know now that one of the major reasons was the years of sabotage by the French press, whose publishers had sold out to the Nazis, and used the press to promote Nazi ideology and to disarm the French people intellectually (yes, and spiritually) for the battles ahead.

Similarly, the role of the press in our country is to prepare the public mind for a more-ready acceptance of police state measures. Or, more accurately, to condition the public mind so that the people will not protest and resist fascist advances. This the press does both by the sins of commission and omission.

By unending propaganda for reaction and by betraying its solemn duty to keep us informed and arm us with the truth, the press does its dirty work. By deliberately misinforming its readers and by deliberately failing to inform them about the things they should know to be the well-informed citizens without whom democracy anywhere cannot long survive.

A Case In Point

A current situation which illustrates the inter-relationships of the various arms of reaction, and how the press eagerly perverts its mission, is the treatment by the Los Angeles press of the arrest and detention of four local residents for deportation—David Huyn, Miriam Stevenson, Harry Carlisle and Frank Carlson.

Here is a case where fascist legislation, the McCarran Act, is being used in an attempt to deport from the U. S. four good people who because of their services to their fellow men would be a credit to any nation—while outright Nazis

are welcomed to the USA and Truman embraces bloody fascist Franco.

Now, to begin with, if the press were fulfilling its responsibility to its readers, and to its self-announced dedication to the preservation of democratic ideals, would it not have fought against the unconstitutional McCarran Bill? But the press fought for this anti-democratic bill. It lied and continues to lie about the law's provisions and objectives.

Secondly, assume for the sake of discussion that the press made an honest mistake about the McCarran Bill. Wouldn't you think that an honest press would keep the people informed about how it is being administered, and change its opinion when it found that the law was being used only (thus far) to hound progressives from the land, to intimidate all who protest at what is going on in the nation today? Have you heard of any Ku Kluxers or traitorous profiteers being hounded?

And when Americans want to buy space to tell their neighbors what is going on, to perform the duty the press is supposed to be doing, the newspapers refuse to sell the space—as happened a few days ago when the Los Angeles Daily News refused to accept an ad urging readers to write and ask the immigration authorities to release David Huyn, Miriam Stevenson, Harry Carlisle and Frank Carlson—good people who are being deprived of their freedom.

Thirdly, wouldn't it be reasonable to assume that even a negligent press, if only to keep up some pretense of its claims to fairplay and "freedom of the press," would open its columns to all Americans on an equal basis?

What a foolish question. Of course not. For a press (or radio and movie industries, or the school system, for that matter) that is so deeply committed to the anti-democratic conspiracy being engineered by the economic royalists to whom they have sold out (as did the French publishers) and of whom they are an integral part, will not and cannot be concerned any longer with the pretenses even to lip-service to the "ideal" they have discarded.

* For they think "der tag" for which they have been preparing is about to dawn . . . and they shall reap their just reward.

Raphael Rosenberg[Vol. 223] **NAZIS TEACH AMERICAN
GENERALS***January 11, 1951*

Plans are afoot to foist universal military service on America's youth. Spokesmen for the corporations, the Administration, the militarists, have been harping on the theme that universal military service is essential to our security . . . and that all youth owe their country some time in the armed forces.

That is the pet theme, for instance, of Ike Eisenhower, who is going forth to lead Nazi soldiers, among others, in a new crusade for the "Free World." And Congressmen, secure in their age and well-paying jobs, very impatient for the sacrifice, are insisting that the induction age be lowered to 18 years.

These propagandists, however, have not told the American people that their plan for the regimentation of our youth is based on the ideas of General Heinz Guderian, Hitler's chief of staff, who did so much to bring death to so many of America's youth in the last war.

On February 10, 1950, the U.S. News & World Report stated that the plans for universal military service were based in part on the plans of Gen. Guderian—who boasted that his plans were the bible for American military officers. Groundwork for presentation of the Guderian plan to the public was laid with the appointment of Gen. George Marshall as Secretary of Defense.

We must differentiate first between universal military service and universal military training and selective service. They are not the same. Universal military service would conscript every American of 19 years (maybe 18 years) for at least 24 months, regardless of physical, mental, educational or marital status. Only the totally disabled or insane would be exempted. Higher education, in most cases, could not begin until after completion of the service. All youth would be subject to overseas service. (Shades of Korea!)

Not all physically qualified youth would be sent into the armed forces. Some of them would be trained in "civilian defense" jobs under army supervision, and would be subject for assignment for factory work, still under military supervision. This would create a "scab army" available for duty

at any plan. (What a threat this could be to organized labor!)

The years 18-21 are among the most impressionable of youth. Knowing what we do of the anti-democratic ideology of our militarists and their basic inhumanity (look at McArthur in Korea, and Gen. Clark calling for an "army of killers") we must realize that the effect of such military indoctrination of our youth will be a real threat to the very existence of democratic government in the USA. Remember what Hitler did with and to the German jugend.

Military Dictatorship

A fundamental concept of the Nazi Guderian plan, favored by our militarists, is to eliminate all layers of civilian authority between the President and the military. That this points to a clear and present danger of military control of the American government is evident from what the generals have been doing since the end of the last war. They have already infiltrated many levels of our government.

In May 1950, Drew Pearson reported "on the eagerness of the military to encroach on the civilian branches of the government. A lot of things have been going on which the public doesn't know about, all pointing toward more and more military rule."

This is proved not only by such blatant interference even in the conduct of our foreign affairs (it's Mikado McArthur who's been dictating our policy in the East), and such criminal warmongering as that of the generals yelling for "preventative war," but also by such moves as making generals college presidents.

It is reported, further, that American generals are much taken with the notion of establishing an American General Staff, similar in structure to the hated German General Staff which brought so much tragedy to Germany and the world. This is something the American people dare never permit, at the risk of losing their liberties and all control of their government.

So, our militarists have come full circle! From fighting the Nazis in a war against fascism to aping Nazi methods in what must be a war against democracy and their own

people! Nazi generals teaching American generals how to "save democracy." There you have the fruit in all its evil of the Truman Doctrines, the Marshall Plans, and the "crusades to contain Communism."

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TIME FOR COURAGE

This is indeed a time to try the souls of men and women—and it is understandable that some of us are having a very difficult time deciding what our responsibilities are.

Faced with what they consider the evidence of the overwhelming strength of American fascism, some of our neighbors are saying: "What's the use? Reaction's in the saddle. What can you do but go along, try to ride it out?" Such a view indicates a serious misunderstanding of the situation.

The misunderstanding, an over-estimation of the power of American fascism, is based on a false premise: that the rulers of this land are as strong as they appear to be on the surface. They are not.

Let us examine several of their operations and see for ourselves if they are as strong—and if their strength is as invincible—as their posturing and propaganda have painted them.

1) It is clear to every thinking person today that in resorting to war preparations and actual warfare, the administration and the corporations for whom it speaks are not acting to improve the welfare of the common people (thus insuring the nation's security), but are doing these things only to save and increase their own profits and power. Even Wall Street spokesmen admit repeatedly that our economy is very shaky and that war orders are essential to stave off a major depression.

When we relate the weakness of United States economy to the even more rotten economic structures of the other nations in the "Western world" we get a first-class picture of vast weakness, not strength. It is a truism that without real and broad economic strength you cannot have real—certainly not permanent—political power. Therefore, where America's rulers should be the strongest they are the weakest.

2) The efforts of Truman's administration since its incep-

tion to force thought control on Americans, to suppress all distant—plus the official terror directed against labor leaders, minority leaders, and other responsible citizens—certainly are no proof of its confident strength. Quite the contrary. A government which was in the right would be confident, and would be supported by the devotion of its citizens—and would not need to regiment their lives and thoughts. Thought control and official terror are proof positive of the administration's weakness. It fears the people.

3) Will anyone in his right mind assert today that American imperialism's aggression in the Far East, and elsewhere, proves its overwhelming strength? (Not even Taft and Hoover.) Can any government be considered strong, the bankruptcy of whose foreign policies has been so exposed as Truman's in Korea? Whose military forces and leadership has suffered such setbacks? Whose actions have lost it the support even of most of the anti-democratic "allies" it has over the globe? The questions answer themselves.

People Want Peace

Perhaps the most striking revelation of the weakness of the nation's rulers—of their unfitness for leadership and of their complete moral bankruptcy—is offered in the report they wrote for Truman on the state of the nation.

They know the American people want peace, that we don't want our sons slaughtered on foreign fields to insure greater profit for the Morgans and MacArthurs—and they offer us only the prospects of more slaughter in other foreign lands.

Truman and his associates know the people want peace, the chance to raise their families in security, to give them healthy minds and bodies, to build homes and schools and hospitals—and he says we must prepare for war.

According to the nation's quislings, the America of Jefferson and Lincoln, of Roosevelt and Robeson, is to find its "true destiny" in becoming a police and making war endlessly. Wasn't it Mussolini (remember him?) who said that war was the highest form of civilization? And wasn't it Hitler who proclaimed that his nation would find peace

through tanks and planes and bombs? How invincible did these two misleaders prove to be?

Those Americans among us who are confused and frightened must see that fascism can never mean everlasting power. By its very nature it is its own sure grave digger. It cannot last long. (This is not to say that it isn't dangerous and powerful while it lasts or that the price of defeating it will be cheap.)

We must understand that those of us who give up the fight for democracy too easily are helping the fascists, are casting our lot with the fascists—and will inevitably go down with them. While those Americans who hold out, who fight back, will inevitably win—and attain the real power in this nation..

(To Be Continued)

[fol. 225]

TIME FOR COURAGE

Justice Brandeis, one of the greatest scholars and statesmen this country ever produced, once said: "The greatest menace to freedom is an inert people." This is not merely an opinion, but a historical fact . . . and points to part of the explanation for the mistake many people are making in over-estimating the strength of American reactionaries.

Because many Americans are themselves inert—indifferent to crises in national and international affairs or ~~unable~~ to determine how they can serve in such crises, because they are uninformed or unaware of their responsibilities as citizens—they tend to underestimate their own power and overestimate the strength of the opposition.

Once the majority of us wake up, cease being inert, and learn who the real enemy is (the giant corporations and their official flunkies) and discover the enemy's real objectives (to make us all slaves serving the privileged few)—then we can get a true measure of our own power and how it can be applied in solving our own and our country's problems.

Then what seems to be the "overwhelming" power of the ruling class can be seen in its proper perspective, and much of their present activities will be revealed as evidence of weakness and not strength.

Much of this awakening occurs when we begin to under-

stand that by keeping quiet, by meekly conforming to the regimentation which the official terrorists are trying to impose on us, we cannot gain anything substantial for ourselves and families. By "going along" we are in effect sacrificing permanent security for a very temporary gain.

Individually we may win some temporary convenience or comfort, but not for long. Because true security for the individual can only come when all of us are secure. No one person himself in the world today can, by his own efforts guarantee his own security, let alone his family's. Thus, by helping to create a secure society for all Americans we will be doing the most and best to create it for ourselves and loved ones.

Time to Fight

Certainly this means paying a price, a great price in some cases. But will it mean any greater sacrifice than millions of freedom-loving people have had to pay in the past? Than the Negro people have had to pay for centuries? What makes other Americans *think* they can "get it wholesale?"

Certainly times are tough. But are they any tougher than Americans faced at Valley Forge? Or during the Civil War? Any tougher than the Allies faced at the start of World War II? Are the odds any greater against us than the Chinese people faced against the combined danger of Chiang-Kai Shek and U.S. arms?

Let's get together, then, and gain strength from each other, and added courage from an understanding of certain basic facts of life in 1951:

1. We who want peace and a democratic America are not alone. Hundreds of millions of people throughout the world are on our side. Look at the millions in the World Partisans for Peace, and the influence they have already had in staying the atom-itchy hands of our militarists.

2. We are all naturally concerned with the price we will have to pay for refusing to collaborate with American fascists, refusing to knuckle under and accept regimentation. It may mean loss of jobs, increased social prejudice, imprisonment and worse. But all these prices many are already paying—and all the rest of us will have to pay

anyway if we allow the fascists to take full power. And it will be for nothing but service to fascism.

Whereas, if we are willing to fight now (not wish later on that we had) it will be a real investment in freedom and security for our families and neighbors. And the sooner the more of us fight back, the less will be the price we will have to pay and fewer of us will have to pay it. Today, fighting back is the only way to save ourselves and our nation.

3. People are fighting back already, and protesting, all over America. They don't like what our government is doing at home or abroad, and they are saying so. It is easier to talk to people today. In markets, on streetcars, in private homes, everywhere, Americans are talking and thinking.

[fol. 226] And many must be learning what America's history so eloquently proves: that there are times when it is a greater loyalty to American ideals to refuse to conform to the dictates of evil men in power, *hat* it is a greater patriotism to oppose the anti-democratic conduct of governmental officials.

We who fight for our rights and the rights of all people are the better Americans.

(To be continued)

[fol. 227] *Rept. Rouben*
THE VATICAN'S POLITICAL POWER
March 13, 1951

President Truman found it necessary recently to deny reports that he plans to accredit an American ambassador to the Vatican. In view of Truman's record for honesty, we will not be surprised to learn shortly that such an ambassador has been sent from the USA to Rome.

Be that as it may, it is well to know something of the role of the Vatican in world politics—as illustrated, for example, by the part it played in World War II. For it is with the Vatican's role as a world political power that we will be (and have been) dealing. After the last war the Allies captured numerous documents which revealed the relations between the Pope and other political personages. An outstanding authority on the subject is Avro Manhattan's work **THE VATICAN IN WORLD POLITICS**—a book well worth reading and re-reading.

After a fully documented expose of the immense contributions made directly by the Vatican and the national hierarchies in Italy, Spain, Germany and elsewhere in helping Mussolini, Franco, Hitler and other powers—the author presents a detailed account of how the Vatican helped Hitler launch World War II and supported the Axis to the day of its downfall.

When Hitler was preparing to invade Poland he asked the Pope “first, not to condemn the invasion, and secondly, not to ask the Catholics in Poland to oppose it, but to rally them to a crusade against the Soviets.” The Pope agreed. Not a word of condemnation did he offer when Poland was overrun in 1939. Contrast this with his “lofty moral” condemnation of the USSR when she fought Finland.

When Norway was invaded in 1940 the Pope was asked to condemn the invasion. Again he remained dumb . . . though only a few months before he widely publicized his “five peace propositions” in which he claimed concern for the “rights of small nations.” When Belgium, France and Holland were conquered “the Vatican ordered the German hierarchy to say prayers of thanksgiving in all German Catholic Churches for the Fuehrer.”

And the Pope opened secret negotiations with Hitler for a new Concordat—an agreement with Hitler in which, in return for a privileged position for the Church in the New Germany and “wherever German armies conquered,” the Hierarchy would “make itself indispensable to the nation for the victorious conclusion of the war.” In January 1941 the German bishops in an official statement expressed the hope that they “shall be allotted a share in the internal reconstruction of the Greater Reich. . . .”

No Help to the Allies

As Nazi armies ravaged vast areas of the USSR, the Vatican advised the national hierarchies throughout the world, even in the Allied countries, “to support the military campaign against the Godless Russians. . . .”

But when the Soviet Union began to counterattack, the Vatican tried desperately to keep the USA and Great Britain from aiding our Ally and to “find a means of preventing Russia from advancing westwards.”

Roosevelt advised the Pope that there was no hope of a negotiated peace with Hitler and urged that the Vatican should "come to some understanding" with the USSR. When the Vatican refused, FDR sent Msgr. Spellman to Rome—where the Pope informed him that he would not "accept the request of President Roosevelt to call on the Catholic world to fight Nazi Germany . . . because the Vatican is unable to identify itself with the war aims of any group of belligerents."

However, as the evil Nazi power reached its final days the Vatican called urgently for a "peace without revenge" and "began once more to warn the victorious nations . . . that the Allies had to be generous to Germany and . . . that they had to take measures to prevent the spreading of Communism. . . ."

When the Allies entered Germany, the German cardinals and bishops began to "thunder against wicked Nazism"—but one of their leaders, Archbishop Groeber, published a pastoral letter confessing ". . . in the eyes of God at least we (the hierarchy) bear quite a bit of responsibility." Amen.

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Raphael Konigsberg
ECONOMIC NOTES

March 22, 1951

Several weeks ago we considered the fact that practically all newspapers, radio programs, et cetera, are so dishonest that the person who wants to be truthfully informed about world affairs must get his information elsewhere than in the metropolitan press, the radio, the publicized books.

In our last three columns we have discussed the material to be found in three examples of reliable sources of information: Harry Haywood's book **NEGRO LIBERATION**, the monthly publication **LATIN AMERICAN FACTS**, and Avro Manhattan's **THE VATICAN IN WORLD POLITICS**.

In today's article (the last of the series) we present excerpts from the monthly research bulletin **ECONOMIC NOTES**—which has for many years been the outstanding source of reliable information on our nation's economy. It is publications of this type which we need to arm us with the facts essential to understand what is going on.

As you and I and our neighbors watch our shrinking

weekly income buy less and less of food and clothing for our families, it is well to know that the Journal of Commerce is able to assure its wealthy readers that "The general wage-price freeze proved a good deal less of a threat to corporate profits than many had feared." While Dun's Review assures the same privileged few that 1951 will "be an exceptionally good year for business. Despite tax increases should remain very high."

That these financial counsellors know what they are talking about is proved by Truman's own Council of Economic Advisors who have reported that "the net profits of \$22,400,000,000 last year were more than double the profits of the wartime year 1944 . . ." Never before even in a full-scale war have corporate profits been so high.

Moody's Stock Survey expects that profits before taxes could well be even higher (in 1951) than the fantastic record of 1950. But the Wall Street Journal warns that "A peace scare might knock a lot of profit out. . . ."

High Prices

With the cost of living at the highest point in history, the director of the phoney program of the Office of Price Stabilization admitted that prices will continue to rise, perhaps another 5% to 7% by midsummer—after which he hopes some stability will be achieved. As the conservative N. Y. Herald Tribune comments: "A price stabilizer who is . . . willing to accept a 5%-6% rise is a stabilizer who is likely to prove powerless to prevent a 10%-12% rise. . . ."

Effective enforcement of even the weak price stabilization program will be virtually impossible—considering that there are only 500 employees on the staff compared to 65,000 during World War II. And what makes it worse is that the Department of Justice rather than the price agency has the job of enforcing the new law. As one former OPA official reports "The Justice Dep't . . . is subject to political pressure."

Prices are continuously climbing upwards. The U. S. Bureau of Labor Statistics' consumer price index was 81% higher in December 1950 than in August 1939. It was 4.8% higher than in June 1950—when the Korean intervention

was launched. The Bureau says that the cost of food alone is 8% higher than in June 1950. The food dollar was worth only 47.7c in November, 1950.

Meanwhile unemployment is still serious in certain industrial areas. The same federal Bureau (whose figures always understate the truth) reports 2½ million jobless in January 1951. The United Electrical Workers Union, whose figures are more reliable, puts the unemployed figure at 3½ million.

But, the use of child labor is increasing. In April 1950 there were 663,000 boys and girls only 14 and 15 years old at work—more than twice the number reported working ten years before. Some 3 million boys and girls at work at some time during 1949.

That then is the state of our economy: the poor getting poorer, the rich getting richer!

[fol. 229]

Raphael Konevsky
THE CESSPOOL
March 29, 1951

The moral fiber of our time is well, and, tragically, illustrated by the contrast between the furor created over the bribery of several basketball players in Eastern colleges . . . and the profound silence on the part of the leaders of our society in the face of the grave violations of our moral codes and the treasonous betrayals of our political codes by the very leaders of our land.

What is particularly revolting about the sanctimonious outcries aroused by the bribery of athletes is that those who claim to be so outraged are the very ones who have taught these young men that "that's the way to get ahead." For it's "dog eat dog" and "I'll get mine first; to hell with the other guy." Education by example has always been more effective than education by preaching.

Why should these athletes have felt that they were doing anything wrong when every day, all around them, their elders steal, and betray and lie—and gain riches, honor and power thereby?

Consider the Kefauver Committee's investigations of the unholy marriage between the rulers of our political world and the criminal world. A William O'Dwyer, mayor of a great city, accepts "gifts" from a Frank Costello—and

instead of being driven from the company of decent men is rewarded by being made ambassador to Mexico by the president of the United States.

While this same president assures the nation that all his aides are honorable men... as the investigation of the RFC proves that many of them are crooks. Congressmen like Andrew May and Parnell Thomas are jailed for stealing from the government—but that doesn't keep our leaders from permitting a Thomas to set himself as arbiter of what is good Americanism, and what is culture.

But then, educators charged with the solemn obligation of moulding the mind and character of American youth eagerly accept regimentation of the curriculum—in exchange for military funds; and rationalize it all in the name of "patriotism." Professors, who should be inspiring our youth with a militant determination to fight for democratic principles, gladly embrace the yoke of "loyalty oaths"—to save their jobs and comforts, temporarily.

Traitor! Traitor!

Betrayal is in the air. Judges, with impunity, violate our constitutional rights—and editors honor them for it. Stool pigeons are the new national heroes, and hypocrisy has been raised to the level of national policy.

The president violates his oath of office by dragging us into war—and the nation's spiritual leaders applaud. But when the federal government betrays its trust in failing to defend Negro citizens from the Southern lynchers, the same leaders are dumb as the dead.

The famed American standard of living is deliberately lowered, the cost of living highest in history—but the captains of industry demand that workers be paid still less and taxed still more, while their profits are the highest in history... fed as they are on war orders. And the stock market shudders whenever the chances for peace brighten.

Millions of human beings gave their lives in the last war to defeat the anti-democratic forces of the earth. The people earned, and that great victory promised, peace and security and more democracy. But the leaders offer only more war, more fascism, less security, less democracy. Was there ever a betrayal as awful as this?

But silent, silent as the graves into which they would lead this great nation, are the civic, industrial and moral leaders of America—who, naturally enough, righteously condemn basketball players for following their elders example and accepting bribes.

They are men without principles, without morals, without hope—these leaders of our land. It is the students in our colleges, the youth of America, who have far higher principles than their elders—and therein lies the hope of our nation.

[fol. 230]

THE CHOICE BEFORE US

Raphael Kohnberg
April 19, 1944
While on duty with the Seventh U. S. Army in Germany in 1945, I made the acquaintance of a remarkable man, Edward Kupfer. He had been a prisoner in the Dachau concentration camp and had been freed by our troops.

Edward Kupfer was remarkable in that he had succeeded in achieving an amazing self-imposed mission—that of writing a history of Dachau under the very eyes of the Nazis who guarded him. Everyone can tell you that this was an impossible task. Yet Kupfer did it. The U. S. Army Intelligence verified that he did it. (How it was done is another story...)

The fact of Kupfer's achievement was relayed to the Seventh Army Headquarters in Heidelberg. As orientation officer for that army, responsible for supervising the political education program for our troops, I decided to see Kupfer—believing that he could teach me much which would be valuable in that program.

A man who had survived the hell of fascism and returned to the world of the living could teach us lessons (I believed) which would be helpful should we Americans be faced with problems in defending democracy similar to those the German anti-fascists faced during Hitler's rise to power.

From other survivors of Hitlerism I had learned that one of the major factors which contributed to the Nazis' success was the failure of the German anti-fascist forces to achieve unity in the struggle against them. Had these forces united, the Nazis would not have conquered—despite the immense help they received from the financiers and politicians in other lands, including the U.S.A..

In discussion with Kupfer, I concentrated on another

phase of the problem which interested me deeply. Having observed that there were all types of human beings among those rescued by the Allies from the concentration camps, I asked Kupfer:

"What was it that determined who had the best chance of surviving after being thrown into the camps?"

"Why, those who knew why they were there!"

Choose Your Side

"What I mean is this," added Kupfer, "the men and women in pre-Hitler Germany who were active in fighting the Nazis, whether through trade union work, or a political movement, or in a progressive writers' club, as I was—they had the best chance of surviving.

"They knew that the fascists cannot tolerate dissent or opposition. They knew that the fascists knew that if the people were allowed to think and speak and act freely, the people themselves would not allow fascism to win. So the fascists, the traitors to their country, had to silence the active fighters for civil liberties, the fighters for decent living standards. The fighters knew therefore why they were thrown into the concentration camps.

"Having landed in the camps because of their belief in democracy, they had faith left to live by. They had faith that the democratic forces of the world would inevitably triumph and save them. This faith kept them alive.

"But those who did not do their share in the fight to stop the Nazis from conquering Germany, those who compromised with the Nazis and sold out to them—when the Nazis double-crossed them (as fascists always do) and threw them into the concentration camps, they had nothing left to live for, and so they died."

As I expressed my gratitude to him, Kupfer concluded:

"So you see, if you want to take a message back to your countrymen—as you say—tell them they must fight while they still have the chance to fight, and especially while they have the chance to choose the side on which they fight.

"For fight they must and will. No one can be neutral in such a war. The fascists will force you into fighting for them, into becoming one of them, or they will kill you. They have no use for neutrals.

"So, since fight you must, and perhaps die, far better that you give your energies and your life, if need be, for democracy than for fascism. It's the only chance to save yourself anyway. Far better to fight while you can, than wish later on—in the concentration camp—that you had. For that's the sort of self-accusation, mental torture, that will kill you.

"You see now how right we were, we who refused to compromise with the fascists, when we said that the forces of world democracy must inevitably triumph."

Raphael Karpisberg

[fol. 231] MEXICAN-AMERICAN RELATIONS

April 12, 1951

One of the local metropolitan dailies recently held a contest for the best short essay on "Why Continued Good Relations Between the U.S.A. and Mexico Are Essential to the Success of the United Nations."

Since this is a matter that must be of vital concern to us all, I herewith submit an essay on the subject—one that can be guaranteed not to win any such contest these days:

The position of world power which history has thrust upon our nation, and which our government has assumed, demands that we set an example, in the family of nations, of the highest and best in international relations. If the U.S.A. cannot develop such relations with Mexico, our next-door neighbor, other nations will seriously question our capacity for friendship with them, and our effectiveness in the United Nations will be further compromised.

The state of our affairs with Mexico is a test of our claims to a belief in, and the practice of, democracy. Especially is this true of our declarations about the equality of all men. For the people of Mexico do not have white skins—and neither do most of the world's people. This majority of humanity will judge us (as they have in the past) by the way we treat their colored brothers, and ours, in Mexico.

The foreign policy of the United States is based on the assertion that our government is motivated solely by the desire to assist other nations in achieving the democratic way of life we say we prize. The nature of our relations with Mexico—particularly the way in which the masses of her people benefit from those relations—will help determine

how receptive the United Nations will be to our ideas and our program.

Our success with Mexico would strengthen our relations with all the other Central and South American countries, nations so important to our welfare and the welfare of the world. It would enhance the position of Mexico. A strong and democratic Mexico is essential to the western hemisphere and to the United Nations.

The best of relations between the U.S.A. and Mexico would improve the economic conditions of both countries, and would enable both peoples to feel greater security. Further, in view of our past relations with Mexico, the building of mutually beneficial relations with her would prove that a great nation like ours does learn from past mistakes. This would be invaluable to us and to the United Nations because many nations are seriously disturbed not only by our past errors—as in South America—but our current ones in China, Korea, and elsewhere.

Of utmost importance is the certainty that greater friendship and better relations between Mexico and the U.S.A. would aid materially in democratizing the internal conditions in both countries. A government which is not a good friend to its own people cannot be a good neighbor to others.

Specifically, improved relations between the U.S.A. and Mexico would profoundly influence the treatment accorded the millions of our citizens of Mexican descent. This in turn would very favorably affect our treatment of our Negro citizens and other minorities.

A United States and a Mexico whose own life and institutions are more democratic are assuredly essential to the success of the United Nations.

[fol. 232]

ELECTION REFLECTIONS

One of the most powerful men in America today is Senator Robert A. Taft. He is, in every sense, representative of our country's ruling class—particularly of its intellectual dishonesty.

Of the millions of words spoken about the results of the November 7 elections, he made what may yet go down in history as the most absurd and inaccurate observation. Said

R.A.T., the election results are a rejection of "Truman's program for imposing a socialistic planned economy on the American people." It calls to mind Hitler's big lie that his fascism was a program of "national socialism."

Certainly the election was a rejection of Truman's program—his program for war and American fascism, which Taft and his collaborators are helping Truman and his cronies fasten on America. Our country's great tragedy is that most citizens could express their rejection only by voting for Republicans.

There are three major reasons for this: 1) The Progressive Party does not exist in every state and where it does it has not the means to run candidates in all offices; 2) The national hysteria and terror over Communism, manufactured by the Taft-Truman axis to divide and deceive the American people, has scared many people and they are afraid to vote Progressive; 3) Vast numbers of Americans, politically uninformed through deliberate manipulation of our schools and informational media, still think there's a difference between the Republicans and Democrats.

It is not a contradiction to state that the two old machines are the same and that the large vote for the Republicans was a rejection of the Democrats.

The defeat of such leading spokesmen for the Truman Administration as Senators Lucas, Tydings and Myers, and would-be senator Helen G. Douglas, was not a personal defeat, but clearly a repudiation of the Democratic program they espoused. Especially is this true of Douglas—for whom the Democratic Party turned out every big gun from Truman down in the effort to elect her. There could not have been a more decisive repudiation of what the Democratic Party stands for.

No Mandate for Republicanism

If the Republicans believe that the election results are a mandate for them to continue their unreasoning opposition to every measure that will serve the people, they are willfully blind, and certainly will not win the presidency in 1952. If my friends will forgive me, I will offer the Republicans a program guaranteed to sweep the country for them in 1952.

All they need to do is pledge to: 1) Stop the treasonous waste of American resources in the futile efforts to suppress free people everywhere—and use them instead to build homes and security in America. 2) Take our troops out of Korea, the Philippines, and elsewhere—and use them to safeguard civil liberties in the 48 United States. 3) Smash the corporations' stranglehold on America's economic and political life. 4) Restore freedom of speech and thought to Americans. 5) Join the Soviet Union in rebuilding a democratic United Nations and world peace. These five points represent the real mandate of the people.

The clearest evidence of the meaning of the November 7 elections is given in the great vote in California for the Independent Progressive party. In 1948 some 190,000 votes were cast for Henry Wallace. In 1950, after two years of official terrorism, almost twice that number, 340,000 voters, voted for IPP candidates in California! When this is related to the over 600,000 votes cast for Bernadette Doyle in the primary election for superintendent of education, the real temper and aspirations of the people are evidenced.

Especially revealing is the vote for a Negro leader in the 14th C.D.—particularly in the 62nd Assembly district, where over 8,000 Negroes broke away from their betrayers in the two old parties and voted for Charlotta A. Bass, the Progressive candidate. (In this connection certain individuals like Gus Hawkins, Vince Townsend, et al, have much to answer for to the Negro people.)

The California vote proves that more and more people are becoming aware of the futility of depending on the two very old parties, and are learning that only the Progressive Party's program for peace, security, abundance and brotherhood will meet their needs and save our land.

It may truly be said that if there were not a Progressive Party in existence today, we could have to create one. For today only the Progressive Party, of the three, is an American party. It is the Republican and Democratic parties whose program is un-American.

WESTERN CIVILIZATION

June 16/1950

Whenever the Pontius Pilates on the Potomac manuever to heat up the cold war, which would annihilate most of their fellow-Americans, they wring their greased palms and intone that their only motive is the preservation of Western civilization. Whenever they make a move which thwarts the hopes of humanity, they piously raise their eyes to the stock ticker and assert that their sole purpose is the holy one of spreading the blessings of that civilization.

It is not unreasonable, therefore, for us to examine the nature of this commodity they wish to export, and which they claim as a Western monopoly, and see what it has to offer the oppressed of the earth in the year 1950.

Not until eighty-five years after the Civil War did the U. S. Supreme Court decide that Negroes must be served on railway dining cars and given opportunities for higher education "just the same as whites" (in a land where such opportunities are reserved, for the most part, for the well-to-do.)

While in a renazified Germany a Hitlerite film director is freed of anti-semitic charges on the plea that anti-semitism couldn't be a crime since it was no different from the treatment of Negroes in the United States.

And the International Olympic Committee bars the new State of Israel from participation in the 1952 Olympics but accepts a W. Germany group of Nazis who declare that "The true sporting spirit and the mentality of the German people found its highest expression in Hitler . . . and war is the most beautiful of all sports."

A reference, perhaps, to Washington's coming to the rescue of the French killers of the Viet-Namense patriots by agreeing to finance that "dirty war," just as we're still financing the ogre Chiang's murder of innocent Chinese.

While the "big three" approve a new German army and Germany's manufacture of explosives—as the Jewish communities there are forced to form defense organizations again, only five short years after V-E Day.

The Jews need protection in Chicago too, and in Peekskill where they and their Negro neighbors are assaulted—for which the Deweys and Achesons blame the communists, in

accordance no doubt with Truman's pledge that the world will be told the truth about American life.

Which is the explanation we may soon be given for the death from starvation of American children in the midst of abundance in the San Joaquin Valley and the legal lynching of the 6 Trenton Negroes, the Rosa Ingrams and hundreds of other Americans.

Over ten million of us are unemployed, more than half of all Americans can't afford even a minimum standard of living, we need many more schools and hospitals—but the Tafts and Trumans say that more important than these is the "smashing of our labor unions and the "economic reconstruction" of Europe, meaning giving guns to the fascists of Europe for crushing the rising discontent in that land.

So, the bi-partisans offer to meet the needs of our youth with peacetime conscription, police brutality, regimentation of their teachers, and the militarization of our society.

And if our parents protest that this is not the American way of life, not what we were promised for the victory over fascist arms, the Western civilizers deprive us of employment, deport us, deny us impartial juries, imprison us, jail the lawyers who defend us, and set neighbor to spy on neighbor.

Upholders of religion, the pope threatens Italian citizens with excommunication if they vote their conscience—as the devout Truman tells them how to vote, and orders the H bomb, to bring hell to all the faithful.

All this, says the president, brings us "nearer to peace"—so he refuses to admit peace delegates to our country, and welcomes the dregs of the earth who live only for a third world war.

Exposing their moral, spiritual and intellectual bankruptcy, the bipartisan beasts, diseased with colossal conceit and contempt for the people, demonstrate they are trying to make civilization over in their own image—a devil's amalgam of hypocrisy and brutality, idolization of property, want and agony, betrayal and filth, lies and death.

[Vol. 234] Upon which a noted scholar recently commented: "the people cannot live on lies, and the ruling class is incapable of meeting the needs of life. Its problems are insoluble and therefore its defeat is certain."

FREE LAWSON, TRUMBO, DENNIS,
FAST—OR THIS YEAR OF FREEDOM
MAY BE YOUR LAST!

Write the President...

[Vol. 235]

ROBESON VS. FLAGSTAD

Paul Robeson is not acceptable to the management of the Philharmonic Auditorium—and the engineers of the cold war—but Kirsten Flagstad is. The man who represents the bravest and best in American democracy is hated by those who proclaim themselves the embodiment of Americanism, and shower their applause on the woman who collaborated with European fascists. Is it to be concluded therefore that their concept of Americanism and the ideology of fascism are similar?

Last week the management of the Philharmonic refused to rent their auditorium for a concert by Robeson, one of the great singers of all time. Have you heard any outraged protests by those who consider themselves the leaders of our community? Why are the voices of our civil and religious leaders still at such brazen denials of our traditional rights and privileges? With the honorable exception of Charlotta Bass, Carey McWilliams, Reuben Borough, Paul Major, and Thomas Mann, why don't they protest, as decent Americans have done for generations?

And therein is evidence of one of the major purposes of the cold war, of the onslaught of loyalty oaths and witch hunts and war scares—to divide and intimidate and silence the people, especially those who could and should give leadership in so critical a time. For this is primarily a cold war against the American people, not the Soviet Union.

A Kirsten Flagstad, friend of fascists, is persona grata with the misleaders of our country—and a Paul Robeson, friend of democracy, they fear insanely. This is logical—for those who are rebuilding a Nazi Germany where only five years after the war's end the Jewish people are again forced to form self-defense organizations! This is very logical—for those who contemptuously destroy legal guarantees to persecute the Hollywood Ten, the leaders of the Communist Party, the incorruptible Bridges, exemplars of

the people's determination to safeguard America. This is certainly logical—for those who uphold a Parnell Thomas and a Jack Tenney and a Mundt-Ferguson as "100% Americans," and offer shelter to every European and Asiatic traitor who flees the wrath of his own people.

What a desecration this is of the deaths—thousands of Americans in the war against fascism! What a betrayal this is of the sacrifices of millions of Americans on the home front and in the lands and armies of our allies! Followed to its logical conclusion this insanity will soon label as "un-American" every American who contributed to the defeat of the German and Japanese fascists. I predict that those who are guilty of this sell-out of our great victory will be damned by history as the most obscene and treasonous traitors of all time.

Called to account they will be, as they must. Called to account they will be by the never-ending struggles of the courageous democrats in our land—by the people who after 300 years of oppression not only still fight back but produce a Robeson and a DuBois, by the people who can produce a Wallace and a Marcantonio, by the people in the progressive ranks today..

We are the guarantee that American democracy will survive and flourish—not the bi-partisans who doublecross the people, not the university regents who fear democracy and the people's knowledge, not the elite who fawn on a Flagstad and are revolted by a Robeson.

It is we are who are the inheritors of the ideals of Jefferson and Lincoln—we who fight against Mundt-Nixon and for FEPC, we who defend the right of everyone to speak and teach, including the Communists, we who fight restrictive covenants and police brutality, we who fight for full employment and for world peace.

We are the true Americans, who think and act like Robeson. They have lost faith in America, who prefer the fascists. We belong here—and America belongs to us!

PAUL ROBESON WILL APPEAR IN CONCERT
FRIDAY, MAY 12, 8 P. M.

ELKS HALL, 4016 S. CENTRAL AVE.

[fol. 236]

We Are the Experts

Too many of our fellow-citizens have the fixed idea that they don't know enough to have an opinion on various domestic or foreign issues. Too frequently the response to a request for support in election or petition campaigns is "Aw, what do I know about such things? I leave that to the experts. They know best."

For the moment we'll give the obvious retort: "Who are the experts anyway? Does getting rich or elected to office make them geniuses? Look at what a flop that 'great engineer' Hoover was. When you look at the mess they've gotten our country in—you'll call them everything but experts."

What we must understand is that this notion of "not knowing enough to have an opinion" is exactly the idea those who control our country want us to have—and spend millions every week to indoctrinate us with it. They want the average citizen to feel ill-prepared to deal with the key economic or political or social problems which affect our lives—so that he will not ask too many questions and leave things to the "experts" who will then run the country's affairs to suit themselves.

It's true, of course, that many of us were not able to afford all the education we desire. And more of us benefited little from the deliberately distorted facts and manufactured prejudices which pass for "education" in our schools. And all of us are affected by the propaganda with which the newspapers, magazines, radio and movies hit us in a never-ending deluge of what they call "public information."

All these factors are the 3-pronged weapon of those in power to keep us from being properly informed. And by trying to convince us that we're inadequate to understand and deal with the basic problems which affect us and our country they are trying to make us lose faith in ourselves.

Our counter-attack, therefore, must have the primary

objective of regaining that faith in ourselves, this faith in our ability to control the economic and other factors which influence our lives, this faith in our fight to the better world we can create.

A good way to start is by looking at the record of what we have done and what we've proved ourselves capable of doing—the record of our performance in events that really count, in, for example, the most important test Americans have faced since the Civil War: Democracy's fight against fascism in World War II.

Ask any G.I.—ask your son, your husband, ask yourself: Who won America's part in that war? The professional militarists or our citizen army? The answer: We, the citizen army! The military experts and the regular army hacks would have lost for America if not for us. The citizen army won on the battlefield—and the citizen army won on the homefront.

You who served at home, speak up! Was it the corporation executives who won the homefront battle, or was it the millions of patriotic workers in the factories and fields and offices? Contrast the big corporations' treasonous refusal to produce for the war until they'd been guaranteed enormous profits with our workers' high productivity and their contributions to management through the labor-management committees.

And equally important. The history of every nation in World War II—we dare not tire of repeating—shows that the traitors in every land were from the 'upper' class: the corporations executives, the generals and politicians, the 'experts.' While the saviors of every land were the working people like you and your family, the common people—who proved again they are the better people.

So, let us not be in awe of the hi-politicos and professors and executives—who speak for the monopolies which by their very nature cannot serve the people. Those persons aren't born with a monopoly of wisdom nor any genius for solving all America's key economic, political and social problems. Neither are they born with, nor do they ever learn, a compulsion to serve the best interests of the people and the nation.

We must understand that in tackling any basic problems,

at least as important as—and usually more important than—specific information and technical know-how is a desire, a compulsion, to do that which helps the people most: a personal identification with the welfare of all the people, a love of democracy.

Our guiding principle must be: **THAT WHICH SERVES THE PEOPLE BEST IS RIGHT.** If it's a domestic problem—for example: How shall the nation's tax funds be spent?—all we need to know (as we do know) is that it will help us and America more if a much larger share than at present is spent for creating jobs by building homes and schools, for health care and for more education, for encouraging our writers, artists and musicians.

[fol. 237] If it's a problem in foreign affairs: all we need to know is that our government should take that action which will help the people of other nations to liberate themselves and build democracy, such actions as will help prevent the anti-democratic gangs everywhere from existing, and will build peace.

When a specific issue arises about which we do not have the time to become informed, then we can turn to trusted leaders whose advice we can use as guides—people like the great scholar Dr. W. E. B. DuBois and the true representative Vito Marcantonio. With their help and our own decent instincts we will be equipped to form an intelligent opinion.

The people do know what makes up the good life. They know what democracy, decency, honesty, justice and brotherhood are. And with renewed faith in our powers and the unity of us all—we will be the masters of our destiny.

Raphael Rosenberg
[fol. 238] **STRENGTH UNTO STRENGTH** May 18 1944

For many years I have regretted profoundly that I had not personally known Tom Jefferson, Abe Lincoln and Gene Debs. These three above all others in American history I have wanted to know intimately; certain that from such contact I would have drawn priceless understanding and strength for the building of a useful life.

No longer do I feel this loss so keenly—for I am living in the age of Paul Robeson, and I have met him. I think I understand what it must have been like knowing Jefferson, Lincoln and Debs.

The people of Los Angeles who met Paul Robeson this past week have been enriched. They have been cleansed of their fears. They have gained knowledge of their own strength and significance. They have had a vision of the future. This was a visible process—you could see the people glow and bow in his magnificent presence.

After years of subjection to the dehumanizing influences of America's current infamies—here came a man, a clean and honest man, sure of his strength and purpose, from whose person shone the wonder of the dignity of man. A man who carried the hopes of the world's decent people and renewed their faith in themselves—who unfurled again the tattered banner of the American dream and reclaimed for us our right to this great land and its democratic institutions.

Paul Robeson helps to make us better women and men—for he is proof of the supremacy and nobility of a life dedicated to the highest purpose of living: helping to make life better for your fellowmen. He is evidence of the kind of MAN we can be, of the goal of mankind.

Of the kind of people we really are, or would be if society gave us the chance... for while we drew strength from him, he drew strength and courage from us. Not only did he declare that this was so, but this is how it is and always must be. For only when one is rooted deeply in the people—like a giant oak pressed to mother earth—can he derive the nourishment which makes him a great leader. Only a great people could produce Robeson.

He is the honor and glory of America. It is he, and such as he, who by his world-wide deeds keeps the name "American" from being completely stripped of the hope it has symbolized for the oppressed of the globe. It is he, and such as he, who will keep it from becoming the stench in the nostrils of history that is forever the Nazis. (To think that only five short years after our victory over fascist arms we should have to say such things...).

And it is Robeson's loyalty to America that is questioned! By those who every day in a thousand ways in their gilded graves in banks and factories betray our country for less than the thirty pieces—who destroy another constitutional right every time they breathe! They dare impugn this

man's loyalties. Dying woodpeckers nibbling at the mighty redwood.

Paul Robeson grows in strength and we with him—and their fears increase. They are afraid of him and of the 15 million other black Americans he is helping to liberate. They reveal their fear in many ways, most glaringly in trying to conceal it. They think to ignore and hide Robeson with their slimy newspaper curtains; not one "big" paper even reported his week-long visit among us—though they found the space to hail German actresses and Japanese businessmen.

One Negro weekly, it must be reported, refused even to accept a paid advertisement for his concert. Certain infamous leaders of the Jewish community, it must be reported, tried to have the concert cancelled. And oh how long and shameful is the list of the "community leaders" of all colors who declined invitations to meet with him.

They were afraid to be seen in the company of this great man who is forever enshrined in the hearts of men and women of goodwill the world over—who is doing so much to safeguard the lives of those same timid creatures. Their cowardly souls have shrunk—as the heads of victims of some savage tribes are shrunk, and they are just as dead. History and America do not need them.

We are the living, and the future is ours. If we stand together, black and white—as Paul Robeson urges—and say "We want to live in dignity!" we will live in dignity. (Look at what the 'weaker' Chinese people did). If we stand together, the millions of us, and say: We want peace, there will be peace!

We have the strength and the right and Paul Robeson on our side. What have they got?

[fol. 239] MEMO FOR THE BOARD OF EDUCATION

A few days ago my daughter brought home from school a letter sent to all the children by your superintendent, Dr. Stoddard—a learned man, I'm told, who is entrusted with supervising the education of Los Angeles' children.

Written, no doubt, in the spirit of the great moral leader whose precepts the devout members of the Board publicly proclaim—who said, "Suffer little children to come unto

me . . .”—the letter told of your plans to drill our little children in methods of “protecting” themselves should the atom bombs fall.

Little children being filled with dread and hysteria! Little children being made the pawns and casualties of the dirty war! Little children coming home frightened and confused: “Mommy, look—I put my hands on my head and the bombs won’t hurt me!” “Daddy, please—can’t we move where there is no sky so the bombs can’t fall on us?”

Are there any words in all the languages you teach—honorable members of the Board—to adequately describe the horror and revulsion every decent human being must feel at this monstrous thing you have done?

All the authorities say—and you teach—that children need security above all if they are to become sound men and women. We can have a strong and good nation only if our children are given the opportunity to build healthy minds and bodies. (And soon there is to be another White House Conference On Children issuing thousands of words of advice on how to raise America’s children . . .)

How can we parents give our children the security they need if the schools—which should be helping us—destroy all that we can build up? Don’t you—and those who think as you do—want America to be a healthy nation? Or do you want a nation of neurotics to be used as Hitler used the German *jugend*?

Will your next step be—in line with the Hitlerian lessons which seem to be guiding our nation’s rulers—to tell the children to spy upon their parents? Why not? Is this more horrible than what you have already done? Will you protest that you wouldn’t dream of destroying the sanctity of the American home which—you orate—is “the foundation of our great nation?”

The Enemy Within

You may reply that you did this thing because you were instructed to by “higher authority.” We won’t doubt it. We understand that this is an integral part of the war being waged against the American people and the democratic way of life.

But for that very reason you should be fighting back—if

only to practice what you preach in your civics classes and to protect our children and our country's future. That's what you're elected for—not to collaborate with America's fascists, the way German educators did with theirs.

What is especially revolting about your action—you who presume to teach our children honesty and intelligent reasoning—is the utter hypocrisy in your trying to shove the big lie down our children's throats, the lie that there must be a war and that we are in imminent danger of "another nation" dropping atom bombs on us.

When the truth is that those with whom you are collaborating are the only ones threatening to drop atom bombs! When the truth is that there is no defense against them—and all your drills will be futile!

Does this not show up the real purpose of your action—to use our children against us, as weapons against their parents' refusal to go all out for the national insanity which our rulers are manufacturing? Isn't it clear that your purpose is to further condition our children, and us, for a life of regimentation, war and insecurity—for American fascism?

[fol. 240] Instead of having these futile, criminal drills, why don't you discuss with our children the possibilities of peace, the virtues of security? Why don't you spend your energies building more schools, training more and better teachers, developing more constructive curricula?

Why don't you educate our older children to an understanding of the real dangers which confront them and America and help build them into believers in and fighters for democracy—instead of perpetuating the lies and prejudices which they will have to unlearn as they grow up?

Yes, you and your kind want to condition our children for a world of war and death. We want them to live in and build a world of peace and life. That is the issue!

You have proved yourselves unfit for this task. We will have to do the job ourselves.

[fol. 241]

FORCE AND VIOLENCE

At a recent conference in this community dealing with the alleged "hoodlum menace" one speaker, according to press reports, declared: "We are not accomplishing what

we should to make our youths better citizens. Maybe we aren't tough enough. . . . Maybe we should use more force. It's going to take some killing. . . ."

For a long time now we have been propagandized with the charge that "the Reds" advocate the use of force and violence to overthrow our government. Day in day out this claim is repeated—and used as the justification for fastening a police state upon us.

It is vehemently asserted that advocacy of force and violence is a danger to the American government and that its proponents should be punished. With this I agree. Such advocacy is un-American and does undermine our democratic processes. Those who preach it must be punished.

I doubt, then, that to urge a conference of law enforcement officials (as reported above) to kill our youth is advocating force and violence and the person doing it is criminally responsible. I predict, however, that in this case—as in many similar ones—nothing will be done to him. For the chosen advocate of murder is not a communist, but one of our "best people," an elected public official, Supervisor Roger W. Jessup.

Mr. Jessup is not communist (I would guess), and neither is William Jeffers, the industrialist, who also urged very much the same treatment for our youth. The editors of the metropolitan dailies who joined in the cry for blood are not communists (as they will be the first to proclaim), nor are the persons who lynch Negroes and "repatriate" Mexicans. Neither are the Congressmen who urge atomic destruction of another nation—nor "Hydrogen Harry" who says he's ready to drop another!

Strange, isn't it, that not one of those guilty of urging and using force and violence is a member of the political party accused of advocating it? Quite the contrary. Everyone of them belongs to the Republicans and Democrats (I suspect) and represents our "better class"—the rulers of America, who characteristically accuse others of doing what they themselves are doing or plan to do to our nation.

It isn't strange at all—because as surely as they must breathe to live, so must they resort to violence to solve the problems their own insanities create. That is the incapable logic of fascism. When faced with the necessity of

meeting such people's needs as full employment and full citizenship they are inexorably driven to use force since they will not and can not find it within themselves to give any significant share of their wealth and privileges.

False Issues

They deliberately manufacture false issues—such as “Zoot suiters” and “Soviet imperialism”—to divert our attention from the real issues. They don't want us to see what they doing to us. They create scapegoats—as Hitler used the Jews—whom they hope we will blame for our ills. And, as degenerate as any, the newspaper publishers join in to stir up the people so as to sell more papers.

In the current publicized “wave of hoodlumism” we find all these elements, mixed as in a witches' brew. The Jessups and the Jeffers', the Heart-s and the Boddys, abetted by such as Biscailuz, rob the minority peoples among us of the opportunity for economic security and human dignity and a wholesome life for our children.

Then they turn around and blame their victims for the conditions in which we live—and urge that our young people be killed. They have to wipe out the evidence of the treasonous failures of the “leaders” of our society.

Their guilt, most evil guilt, is more than compounded when the facts reveal that there has been no real epidemic of hoodlumism. That, in fact, the police records show a marked decrease in juvenile delinquency. And the “big” dailies—rotting shrouds of Satan—have actually combined stories of unrelated accidents and incidents to make it appear that serious crimes have been committed by our youth. This corruption is added to their old tricks of lying headlines and distorted photographs.

There are so many pressing problems facing our young people and ourselves—unemployment, thought control, our government's refusal to make peace. But do you find these 30-pieces-of-silver saddled fuehrers trying to arouse us about them to mobilize our forces to solve them—thus, incidentally, discharging their true responsibilities as public servants?

[fol. 242] What is especially frightening about their demand for the murder of our dispossessed youth is that this

is a logical development of the atom-bomb mentality which infects the land.

The rulers start with loyalty oaths to regiment our thinking. Then they jail people for teaching ideas which differ from their own up-American views. Then they jail citizens who defend the constitutional rights of all of us from destruction by un-American Committees. Then we have the violent attacks of storm-troopers on Negroes and Jews at Peekskill.

Concentration Camps Next

Now they are urging killing of our oppressed minorities. The next step—if we don't stop them—will be concentration camps and crematoria for all Americans who refuse to be their willing slaves.

We have been told that loyalty oaths were designed to uncover those who would undermine the American way of life. Why then isn't the test of loyalty applied to those who are now fomenting racial hatreds in Los Angeles?

On this ground, I accuse the Jessups and the Jeffers of disloyalty. They should be condemned, not the Mexican-American youth. I accuse the Hearsts and Boddys as being un-American. They should be condemned, not the Eugene Dennis' and the Hollywood Ten. (They would be too if we lived in a sane world.)

And they are the creatures—may their tribe decrease—who, to quote Jessup again, want to "make our youth better citizens"—by killing them! (Quite a novel approach, eh?) Washington, Lincoln and FDR must be hiding their souls in shame—as Hitler is delirious with joy.

The best thing for the education of America's youth would be the removal of the Jessups and the Hearst's from any position of influence in American life.

Correction: In last week's column, the last sentence in the third paragraph should have read "This was a visible process—you could see the people glow and grow in his magnificent presence." Sorry.

[fol. 243]

THE OTHER AMERICANS

So much of the public's attention has been directed this past year to affairs in Europe and Asia, that it is easy to

overlook the nations to the south of us and the importance of our relations with them.

With the announcement that there is to be a conference of 20 Latin American nations in Washington, it is well to review briefly the conditions in these lands. Particularly since the obvious purpose of the meeting is to pressure these nations into giving greater support to United States aggression in Asia.

A veteran observer of Latin American affairs, Carlton Beals—who is a Truman supporter—recently asserted: "Except for the more reactionary and feudal circles, anti-American sentiment is greater today than at any time since our marine interventions."

The New York Times complains that the United States has received little help from Latin America in our "Korean campaign." Stanford University's Hispanic American Report affirms that the majority of Mexicans are opposed to sending military aid of any sort to Korea. And the association of Brazil's army officers has strongly criticized U.N. support of North American aggression in Korea.

The New York Post reports that Washington has decided that "Unlike the last war when Latin American troops were not used in combat they will be very necessary for this purpose in the next conflict." And the New York Times discloses that the State Department is "negotiating with Central and South American governments" for the importation of thousands of workers, many of them to be used in labor battalions attached to United States forces throughout the world.

Under the familiar and obscene cry of "fighting communism" the United States has deliberately encouraged the formation of the most reactionary governments in Latin America. Of the 20 nations invited to the conference, 15 have definitely fascist and fascist-like regimes . . . ruling about 110 million people.

S. J. Inman, former United States representative to Inter-American Conferences, has declared that the political liberties of these peoples, our neighbors, have been taken away. Fascism was encouraged by the United States at the last big conference at Bogota in 1948, at the same time the United States betrayed its promises of economic aid to

Latin America—which it made at the Mexico City conference in 1945.

United States Intervention

Beneath a smoke screen of talk about "assistance" the United States has followed the traditional policy of encouraging more economic domination of Latin America by United States investors. Of the total private United States investments abroad in 1948, the State Department reports that 36.3% were in Latin America. From 1940-48 there was an increase of \$1.5 billion in United States investments there—a greater increase than in any area where United States capital is at work.

The State Department reports further that the income from these investments has been increasing steadily since the war. From 1938 to 1945 it amounted to \$400 million a year. In 1949 alone it was \$997 million. While the rate of profit on investment abroad is 17.1%, as compared to 11.1% on investments within the United States.

Since the end of World War II our government has been helping reduce the standard of living of Latin America—7% of whom are reported as constantly hungry.

The United Nations Monthly Bulletin found that the cost of living has risen greatly in that area from 1940 on. For example: Comparing the first seven months of 1950 with 1949, living costs rose 7% in Mexico, 12.5% in Chile, 16.3% in Bolivia, 55.6% in Paraguay. In the same period it rose 18% in the United States. (And we know what suffering that much of an increase means for us.)

The Inter-American Economic Affairs Journal warns its readers: "The cost of living situation is an ugly one with serious political possibilities." And The Nation Magazine published an interview with a distinguished South American who commented: "The awakening of the Asian masses has been the outstanding development of the first half of the 20th century. The awakening of Latin America may be the historic event of the second half."

A valuable source of information about Latin America is "Latin American Facts"—from which the above material was taken.

Raphael K. ...
March 1, 1931

[fol. 244]

THE NEGRO NATION

To help make the rich promises of American democracy come true for everyone, to help each of us live a full life, education is important.

By education we do not mean the thing which is perpetrated in our educational institutions. For the most part they provide only a mass of poorly related facts surrounded by evil prejudices, designed to keep us from becoming mature adults and responsible citizens of a democracy.

By education we mean the achievement of an understanding of the forces which have shaped our lives and the destiny of mankind throughout history.

Such education is rarely achieved in our schools, and then usually in spite of them. To gain the necessary understanding of history and of the means whereby we can control our destinies we must therefore depend on teachers and publications which serve the people. We must turn to books and writers who recognize that it is the people, not the ruling classes, who build nations—that is *it* only thru the people's efforts that mankind's hopes will be realized.

An excellent example is Harry Haywood's book "Negro Liberation." It is valuable not only for its truthful recording of the struggle for Negro liberation, but particularly for its interpretation of the ideas essential to an understanding of the problems of Negro liberation, the ideas which can be powerful weapons for our side in that struggle.

Idea of Nationhood

To illustrate: Haywood presents the idea of the Negro people constituting a nation within the USA, and that they can not achieve full freedom until they gain that status. If his idea is foreign to your thinking, consider the points Haywood makes—all characteristics of nationhood:

While 15 million Negroes are scattered throughout the US, 5 million are concentrated in the Black Belt—a stable community forming the majority of the population over a large area. This is a population larger in size than that of many nations now in the United Nations. They are tied together by many bonds, characteristic of modern nations—

transportation, communication and money systems, and social and religious organizations.

At the time of the American Revolution one-fifth of the population was Negro. In the compromises involved in the making of our Constitution they were excluded from participation in American life. The Negro people were betrayed again after the Civil War—and their hopes for democratic absorption into American life blasted. But, freed from chattel slavery, they were made ready for the appearance of economic classes among them—which is characteristic of all modern nations in a capitalist economy.

The economy of the Black Belt area is largely agrarian, backward like that of all colonial areas. This makes it, in effect, an internal colony of American imperialism—a condition typical of other oppressed nations.

The culture of the Negro has been developing for over 300 years—and he is the inheritor of a rich historical tradition reaching back to the dawn of history. All Negroes speak the same language.

Even if the Negro people wanted to integrate themselves in our national life, our economic, social and political system by its very nature would prevent them from doing so. This means that Negro freedom and equality will be won only in the struggle against Negro oppression.

Fundamentally this demands a fight for land and political power for the Negro people in the Black Belt—a fight for the self-determination of the Negro nation, the right of the Negro people to control their own life.

Such ideas may be new to many of us. They certainly are a challenge to all persons sincerely concerned with the struggle for Negro liberation and the fulfillment of American democracy to study and understand the idea of the Negro people as a nation.

CORRECTION. In last week's column, the reference to Alfred Krupp should have read "destroyer of humanity"—not "... harmony."

[fol. 245]

Doctor DuBois vs. Killer Krupp

Dr. W. E. B. DuBois, great American scholar, outstanding historian of democracy, leader of the fight for peace, has

just been indicted by a federal grand jury in Washington as a "foreign agent."

Alfred Krupp, munitions maker, murderer and enslaver of millions, without whose help Hitler could never have devastated Europe, has just been freed from prison.

The rulers of this nation, self-annointed leaders of "western civilization, Christian morality, and world democracy," welcome the un-Christian, undemocratic Killer Krupp as an ally—and they persecute Dr. DuBois, representative of world culture and democracy.

They free Krupp and rearm the Nazis because they need the help of such creatures in the war being planned. Knowing they cannot expect the support of any good men and women in such a war, they sent their great mouthpiece, Eisenhower to plead with the Nazis to "let bygones be bygones."

Washington, preparing for global war in the face of the opposition of all decent human beings, salvages the inhuman fascists everywhere—for these are the only ones who will favor such a war. In doing so, Ike's "gang" must eliminate all that a DuBois represents, for people like him will fight hard the attempts to destroy democracy.

The Administration must try to annihilate the people's leaders and their moral, political and cultural weapons. Remember how Hitler's lieutenant shouted: "When I hear the word culture I reach for my gun!"

Foreign Agents

Dr. DuBois vs. Killer Krupp—truly the battle of the century! They personify the two worlds which do exist today—the world of peace and democracy and the world of war and fascism.

It is very significant that the freeing of Krupp occurs at the time of the quisling war budget and tax program, the provocation of China, the threatened starvation of India, the recognition of Spain, the building of another string of bases around the USSR, the admitted failure of the Marshall Plan, and the continued aggression in Korea.

Related to these actions, the indictment of DuBois and the reinstatement of Hitler's financier prove beyond all

doubt that Washington and Wall Street have finally decided to dispense with further pretenses and to openly and brutally speed up its plans for world war.

It follows "logically" therefore, that they will consider Dr. DuBois a "foreign agent." A fighter for democratic principles is indeed foreign to an undemocratic war. Culture and art and humanity have no place in such a war. Such men and ideas are not only foreign to such barbaric plans, but a positive hindrance to them. So they must be crushed.

What particular blasphemy it is that the persecution of Dr. DuBois should occur at the time of Lincoln's and Washington's birthdays, at the start of Negro History Week. America's reactionaries, having tried for generations to destroy the record of the Negro people's contribution to America, now seek to destroy the scholar who has done so much to restore that history.

Dr. DuBois vs. Killer Krupp—the eternal fight between good and evil, between democracy and fascism. On which side would Lincoln and Washington be? Whom would they consider the foreign agents, the enemies of American democracy—Dr. DuBois? Or the men who beg the destroyer of harmony to help them destroy America?

[Vol. 246]

Raphael Rosenberg WAR AGAINST AMERICANS

President Truman has proposed that the taxpayers of the USA spend \$71,594,000,000 during the 12 months from July, 1951 thru June 1952. This sum will be spent for the following:

1. Direct military expenditures	\$41,421,000,000
2. International security and foreign relations	7,461,000,000
3. Atomic bomb developments	1,277,000,000
4. Defense production and controls	1,403,000,000
5. Civil defense, defense housing, etc.	948,000,000
6. Veterans affairs	4,900,000,000
7. Interest on the national debt	5,900,000,000
8. All other functions of government	8,284,000,000

The first five items, comprising 73% of the total budget, are directly for war. The sixth and seventh items, 15% of the total, are mostly chargeable to past wars. This

leaves just 12¢—42¢ out of every dollar—for the normal functions of our government, for the administration of those programs (like social security) which attempt to serve the people's welfare. These are what Congress and the press call "non-defense" expenditures.

To finance this budget, Truman and his advisors propose a "tax-until-it-hurts" program to raise \$16 billion during the fiscal year. This tax program has two chief features:

(1) A 4% increase in each tax bracket, starting with an increase from 20% to 24% in the lowest income group, which means an increase of one-fifth in the tax on working people. In the highest income brackets this same 4% means an increase of only one-thirtieth. In other words, a worker who paid \$100 in taxes a year ago is now paying \$120, and will pay \$156 if the new tax bill is enacted. (2) A sharp increase in excise (sales) taxes—such as an increase from 7% to 20% in the tax on autos, from 11¢ to 31¢ per gallon on gas, from 7¢ to 10¢ per pack of cigarettes, from 10% to 25% in the tax on refrigerators.

In a nutshell, as the Bureau of the Budget has figured it, of the total government revenue for the period, 35% will come from direct taxes on individuals, 27% from direct taxes on corporations, 11% in excise (sales) taxes, 4% from customs taxes and such, and 23% from "new taxes." Big business publications, demanding that "we should tax consumption and not production," jubilantly declare "the excess profits tax . . . is much milder than business had dared to hope for."

What It Means

The Administration's budget is a war budget and its tax program is designed to finance that war—a war against the freedom-loving peoples of the earth, particularly the American people.

We have asserted in the past that if the American people permitted their government to make war on other peoples—as in Greece, China, Korea—such a government would in time make war on its own people. In fact, it would be compelled to do so, since without subjugating and exploiting the American people the Administration could not have the political power (freedom from restraint) and the resources with which to wage war on others. The foreign

policy and domestic policy of any government are truly one, simply opposite sides of the same coin.

Our government itself insists that its program is a war program—and its foreign policy is illustrated by its war against the people of Korea who sought to establish their own democratic government. That being the case, it is inevitable that U.S. domestic policy would be guided by the same purpose—as illustrated by its determination to drive down American living standards and to curtail our traditional liberties. The official figures prove it: more than 73% of America's wealth is to go for war and less than 12% to serve Americans.

Truman insists that there must be "equality of sacrifice"—and so working people not only have to pay most of the taxes and a greater increase in their tax rates, but they are hit again by the increased taxes on food and gas and other essentials. We will have less take-home pay and we'll have to pay more of that for the things we need to go on living. The dollar today is worth about half of what it was in 1939.

[fol. 247] The criminality of the government's war program—its determination to reduce our living standards to their lowest possible level—is proved also by its fantastic "price & wage controls." Prices of food and other essentials are "frozen" at their highest point in history, and wages at their lowest point in years—while "1950 witnessed the largest total profits in American business history," as Truman's Economic Council admits. Truman's personal hypocrisy is shown again by the fact he had authority to freeze prices since last fall.

The American people are not only being compelled to give their sons to a war directed against themselves, but they are being forced to pay for it in increased taxes and lowered living standards.

This is the program the same Truman describes as "the only realistic road to a world peace based on justice and individual freedom."

The financial pages of the L.A. Daily News are more accurate. They report that the government's war program is "conspiring to continue the super-boom. . . . One wonders what might happen if some event, now considered remote, should occur to reduce the threat of war."

As the American people celebrated Negro History Week, the American government permitted the legal murder of 7 Negroes in Martinsville, Virginia.

As we honored the contributions of the Negro people toward the building of this great land—the American system of justice electrocuted seven innocent Negroes at the very moment it freed dozens of Nazi monsters about whose guilt there is no question.


While even Supreme Court justices refused to stay the execution of the seven Americans who had committed no crime—Eisenhower, shining knight of Western civilization, found it in his heart to offer wholesale forgiveness to Nazis guilty of the most barbarous crimes in history.

The American President can easily violate his oath of office and declare war on the colored people in Korea, sacrificing thousands of Negro soldiers in the process—but he could not find it within his vast powers to do the perfectly legal and just act of saving innocent men in Virginia.

The U. S. Senate can threaten the colored people in India with starvation for refusing to follow American leadership in provoking war with China—while it ignores the failure of American leaders of "world morality" to protect colored people in the South.

Wonder how the Voice of America broadcasts will explain this latest manifestation of the "American Way of Life"—seven human beings legally murdered to satisfy treasonous prejudice? This American way of life which the State Department insists must be adopted by all other countries. They will probably have a special broadcast stating that the awarding of the Peace Prize to Ralph Bunche in Stockholm proves how highly Negroes are honored in Washington.

Can there be any sharper exposure, than that given by the above events, the wide gulf separating the rulers from the people of America? How contemptuous they are of our needs and aspirations!



The People's Answer

The presidents and clergymen, the justices and generals, may ignore the official murder of seven innocent Negroes, but the American people won't.

We know we can no longer expect any justice from those who are capable of such deeds. They have long since forgotten what justice means—they who defile the word every time they utter it. They have placed themselves outside the pale of humanity.

We know that we must depend only on ourselves for justice, and all else that makes a good life. We will have justice only when we fight for it, black and white together. We will produce the programs and the leaders to guide us to victory. We can do it, for we have done it before, again and again.

In the Civil War period we produced a Frederick Douglass, an Abe Lincoln, a Harriet Tubman. Their ideas and forces won. And it was Lincoln who said: "Without the military help of the black freedmen the war against the South couldn't be won." (We can add: Without their help the promises of the American democracy will never be realized).

And during the Reconstruction days that followed, it was the new freedmen, black and white, serving as legislators, educators and justices, who gave the South the most democratic government it ever had.

But the promises of that period were betrayed by the rising money power, and the achievements of the freedmen wiped from the history books taught our children. Just as today the same money power is betraying the promises of our victory in World War II, and is trying to erase from the recorded history of that war the contributions of Negro soldiers and civilians.

Yea, the present rulers may ignore the Negro genius, sweat and blood which have helped nurture this mighty nation—but the people won't.

For we will not only re-write the history books to tell the truth. Together, black and white, we will make history, and . . .

Justice will be done.

It is not surprising that there is so much confusion among people regarding world-affairs or national problems in view of the way in which the press deliberately misinforms us. But from time to time they are compelled to tell a bit of the truth, if only to serve their own purposes—as when thieves fall out.

Three recent reports—from Korea, from Germany, and from Michigan—do much to illuminate conditions worldwide.

The dispatch from Korea to the New York Times reveals that though installed in power with full support of the U.N. and with his opponents' "broken back," a certain Syngman Rhee "has been unable to win support of a large segment of the population . . ."

Is it not pertinent to ask therefore: Since we knew the North Koreans did not want Rhee, and now our own observance says that the South Koreans don't want him, what becomes of the U. S. arguments justifying intervention in Korea to "support Mr. Rhee, the legal head of Korea, and to enable the Korean people to determine their own affairs"?

The reports from West Germany show that in two important elections there in recent days the people decisively rejected the policy of rearming Germany. Where does the U. S. stand then with its fierce insistence on the rearming of Germany as essential to the defense of Europe and the "Western democracies"—when the people of France and Europe and even Germany are so violently opposed to it?

May it not be asked therefore: If the people in whose interests we say we are intervening spurn us and our efforts, does this not indicate that we are not serving their best interests—that, in fact, what we are doing is opposed to their best interests? That maybe what is being done is more in the interests of those who are forcing these programs on the others?

Specifically: It is reported that MacArthur, the general directing the Korean war, owns considerable investments in the Far East, as do other big financiers, in uniform and out. They also own large interests in West Germany and

throughout Europe. Might it be interpreted that those who are pushing the war are concerned about their investments? Their policy certainly isn't bringing peace and security to Korea and Germany. What then is its purpose?

On both possible interpretations of the war-mongers' motives, they are wrong. They have no more right in law or morals to use American lives and resources to try to dictate to other people how they shall save their national lives (if that is their purpose)—than they have to use American lives and resources to save the investments of the Du Ponts and MacArthurs!

RULERS' PRIVILEGE VS. PEOPLE'S HOPE

The dispatches from Korea and Germany (and every other place) reveal that our rulers have no basic understanding of the forces operating in the world today. The hopes and aspirations of billions of human beings they count for nothing when weighed against their own profits and power.

Perhaps it is more correct to say that they do understand world forces, that they know the liberation movements everywhere are not "Red plots" but attempts of those peoples to run their own lives. But America's rulers simply will not accept what is historically inevitable since it constitutes a threat to their continued monopoly of profit and power.

Therefore, they must try to crush it, to turn history back. And I think that in their desperation they know they will not succeed, any more than did other tyrants in the past, any more than King Canute was able to stop the ocean waves from rolling over him.

Opposed as their whole program is to the interests of other peoples, it is even more opposed to the vital interests of the American people. What are we getting out of it—except mounting casualty lists, lower living standards and fewer civil liberties? And an evil reputation that may outlast the Nazis (the way we've been fondling them . . .)?

[fol. 250] The leaders of the nation must abandon the idea that the U.S.A. has been divinely chosen (even by MacArthur) to take on the "white man's burden." This is not the era of the American Imperialist Century—but the Cen-

tury of World Equality. It is in working for such a goal—peace on earth and equal access to the earth's riches for all peoples—that the true interests of the American people lie, not in insatiably trying to subjugate other nations to enrich still more the privileged few in Wall Street and Washington.

How much longer do the madmen think they can get away with flouting the will of the world? Do they think the American people will continue to support them? Let them take notice of the signs of protest.

From Michigan last Sunday comes the report of the resignation of the chairman of a county draft board who said: "I could not be a party to forcing Americans to fight, freeze and die in the hills of Korea in a cause that is neither holy nor just. . . . I will do my best to support and protect my country but I cannot nor will I sustain nor support the national administration which does not practice the first principles of enlightened statesmanship."

That American, Leonard L. Case, will be remembered when MacArthurs and Achesons have long been forgotten.

[fol. 231]

THE PROFITS OF WAR

Since history teaches us that the ruling classes of many nations have in the past resorted to war to "solve" the economic crisis into which their own greed and incompetence have plunged their countries, we asked the question last week whether this might have been a factor in causing America's financial powers to declare war at this time on the liberation movements in Asia.

In examining the USA's economic condition in the months preceding the intervention in Korea, we found that there were approximately 10 million unemployed in the land, that in some cities the percentage of unemployed was as bad as in the depression; that relief loads were increasing, that the level of income going to the workers was approaching the dangerous low level that preceded that 1929 crash, that a worker's real wages had dropped at least 12 per cent since 1944—and profits were the highest in history, and going up.

Other serious symptoms of America's economic illness just before the instigation of the Korean war were the following:

Small Business and Monopoly

Small business was feeling the crisis too. More and more were being wiped out. For the first time since post-war depression days, more small businesses were being abandoned than were being started.

But monopoly was getting bigger and bigger, the nation's wealth was being concentrated in fewer and fewer hands. Of all the corporate taxable net income in the U.S., 43 per cent of the corporations received 90 per cent of that income.

It is not surprising therefore that the Federal Reserve Board found that one-third of all American families in 1949 spent more than they were earning—just to stay alive. Food consumption was falling—and food prices were still going up. While tons of "surplus food" were being stored in caves.

Sales, Production, Foreign Trade

What is especially significant about conditions preceding the Korean "gamble" is that the invading corporations were making the greatest profits in history—on a decreasing volume of business. Just imagine the profits they made on what little you did buy!

Retail sales were down 5% in 1949, from the previous year—though the national population had gone up 2%.

Industrial production had also declined 17% from December, 1948, to July, 1949, and economists were predicting a further decrease of 17% in 1950. Corporations were curtailing their investment in new plants and equipment by about 45%.

Foreign trade had fallen sharply, nearly 20% from April, 1949, to September, 1949. This was 30% less than the same average during 1947. The sharpest drop in imports during this period was from the Marshall Plan countries.

Summary

The U.S. Bureau of Labor Statistics reported in December, 1949, that the economic trend in 1950 would be down, with gradually rising unemployment, due to increasing productivity per worker and a falling consumer demand at home and abroad.

It was also reported that unemployment would be further

increased by declining production, and as industries introduced more "speed-up" and "incentive wage plans," etc. It was estimated that in 1950 about one million more persons would be added to the labor force.

Leon Keyserling, chairman of the President's Council of Economic Advisors, admitted in April, 1950, that the outstanding economic problem before the country was the "rising level of unemployment in the face of business prosperity." He warned that unemployment would reach 10 million in 1954 unless the nation's economy expanded each year.

Baxter's International Economic Research Bureau, a private agency, warned its wealthy customers as far back as August, 1949, "We are in the greatest depression in our history. Study the break-even point of the average American family in our cities today and you will find their plight even more serious than that of the agricultural population prior to the crash of 1929."

"The United Nation's Economic Report, released in July, 1949, admitted in remarkably polite and guarded language that "A depression is developing in the United States . . . and as a result . . . a depression is developing in other capitalist countries. In non-capitalist countries these economic difficulties have not appeared."

[fol. 252] Can we conclude, therefore, that there was a relation between the economic crisis in the U.S.A. in the months preceding the outbreak of war in Korea and the manufacture of that colossal tragedy?

Correction: In last week's column, the statement that the national income rose 22% between 1949 and 1949 should have read "between 1945 and 1949."

[fol. 253]

Raphael N. Rosenberg
The Profits of War

Part I

Before the start of the Korean War, total federal costs for all purposes were about \$40 billion annually—of which some 75 percent were for war purposes, past, present and future. Now, because of our intervention in Asia, the annual cost of the war program ALONE is expected to exceed \$40 billion—and the total federal budget will run over \$60 billion, maybe \$70 billion.

That is, if the current madness remains only the "biggest arms race in history"—as Business Week magazine calls it—and doesn't grow into a universal war. If it does, then the cost of that is any madman's guess.

These astronomical sums for war mean higher taxes. And where will these taxes come from? You're right, from your shrunken income and mine. Already the working people have been hit, just as a starter, with a \$5 billion tax bill—as of October 1.

To demonstrate the characteristic "fairness" of these laws, the new tax takes 20 per cent more from an average worker than he paid in 1948—but only 13.7 percent more from a man with an income of \$100,000. All this in addition to the unfair excise taxes which we have been paying.

These billions for war mean also higher prices for us, as you know. The U.S. Bureau of Labor Statistics, which issues official reports on these matters, has announced that its wholesale price index has risen 18 per cent since Truman threw our men and honor into Korea. The increase in retail food prices alone is increasing 2 to 3 per cent a month since the intervention. We are now paying 29.8 per cent more for food, clothes, etc. than in June 1946 (when OPA was killed) and 75.5 more than in August 1939. A rise of at least 5 per cent more is expected by the year's end. (All these are very conservative estimates.)

These tremendous sums for war mean less for welfare programs for the people. The forces who give Truman's Administration its marching orders are demanding cuts in "non-defense spending," as the Magazine of Wall Street calls it. And in case we don't get the point, they spell it out: those "functions and activities which are postponable"—public housing, compulsory health insurance, aid to education, et cetera.

The Economic Royalists

According to them, America's only reason for existence is to produce for war. Everything else is non-essential. And, running true to form, it never occurs to these "patriots" that they should pay a fair share, or any share, of the war tax burden—out of their swollen profits, now the highest in history.

Corporation profits have reached the annual rate of \$35 billion before taxes, and \$21 billion after taxes. They've never had it so good. And they've never fought so fiercely to keep from parting with some of it. They are fighting against any excess profit tax—with the help of Congressional leaders who are urging us to make all the sacrifices. The Senate Finance Committee refused to pass such a tax on the rich, but rushed through a "soak the poor" tax which we began paying October 1.

While demanding that we give up our sons and dollars to support the Truman-Wall Street gamble in Korea, these "patriots" are profiteering like mad. Even the Army is complaining of the high cost of making war these days—just since the Korean war started the cost of arms and equipment has gone up 90 percent! Even medical supplies for wounded American soldiers! Rubber is up 95 per cent, wool 50 per cent, lead 40 percent, and so on ad nauseum.

Senator Gillette, chairman of the Senate Committee Investigating Price Rises, declared: "None is hoarding bread, yet prices have risen 1 to 3c a loaf, or milk, which has gone up 1c a quart or more."

The papers, you will note, have been blaming the unwarranted price increases on "the hoarders," meaning the handful of misguided consumers who've bought a few extra pounds of sugar—but not a word about the unprincipled speculators who buy and sell huge quantities of foodstuffs and reap enormous profits. They are just good businessmen.

While profits and the cost of living keep soaring, Truman refuses to establish the price controls Congress authorized. But he is considering wage controls. Not satisfied with the limitless loot they're getting from the government, the profiteers are getting ready to force Congress to pass a national sales tax and an additional tax on any wage increases which labor may win.

All this, and the Korean War has just begun.

What's it all for—this astronomical spending and taxing, this shrill demand for the American people to reduce their standard of living. (Next week we'll discuss these questions).

[Vol. 254]

THE PROFITS OF WAR

Part II

October 26, 1950

Last week we discussed the fact that the American corporations' white supremacist war in Asia is raising the costs of our national budget by some \$40 billion annually—providing that it remains only a "little war." We saw that the corporations' representatives in our government are sucking these billions from the sweat and hearts of America's working people—already the war bill amounts to a \$4 weekly cut in the workers' take-home pay, while it has brought the corporations their highest profits in history.

It is clear to all who will see that as a result of the Korean War the American people are being asked to pay a very high price—for what? And that we are to be asked for even greater sacrifices—for what? We have a right to know why we are being considered to pay such a price again, a few short years after our great sacrifices in World War II. What will we get in return for a lowered standard of living and the corruption of the democratic way of life?

We demand the answers—particularly since a spokesman for America's ruling class, former Secretary of Defense Johnson, declared at the American Legion convention:

"The taxation and military service we may have to bear to meet the present emergency may become a permanent and fixed cost on our price of freedom."

Sounds like one of Hitler's dictates, doesn't it? Let Johnson's collaborators in high places tell us why these monstrous demands on our incomes, lives and liberties may become "a permanent and fixed cost on our price of freedom."

Barron's Weekly, the national financial voice of monopoly, entitled one of its recent editorials "U.S. Empire" and proclaimed: "American troops are fighting in Korea and are deployed . . . along the Rhine in an ancient and honorable task . . . whether we call this making the world safe for democracy, or saving our necks, or the maintenance of an American Empire . . . we may not need to draw on the

spirit of the White Man's burden (tho its extraction from the shelf might do no harm."

To which the National Industrial Conference Board, leading monopoly research agency, adds: "America has embarked on a career of imperialism, both in world affairs and in every aspect of her life. . . ." And Barron's Magazine responds: "The U.S. has inherited an imperial mantle as order-keeper of the world."

Did you ever see such delusions of grandeur outside an insane asylum? Somewhat alarmed, the Wall Street Journal, veritable bible of the elite, tries to caution its own madmen by saying: ". . . to assume that every non-Communist nation in the world is automatically to destroy democracy and must be saved from communism is to begin to arrogate to oneself the prerogatives of deity. It is to say in effect that the rest of the people in the world are irresponsible, incapable of judging between what is good and bad."

Whom the Gods Would Destroy

But there's no restraining them . . . for when the gods would destroy they first make mad. . . .

The National Ass'n. of Manufacturers, thru its president, is reported to have told President Truman's Advisory Committee on Mobilization Policy: "This tension has to break sometime. . . . A preventive war would be one way to end this intolerable situation. Our country, and especially business, can't stand interminable mobilization."

While the Journal of Commerce, another authoritative monopoly publication, affirms that long-term prospects for just that sort of program seems to be good, describing them as "reasonably optimistic as to the 1951 outlook for securities. Such views are based also on the assumption that the armament program will continue . . ." And Moody's Stock Survey gives the assurance: "There isn't any chance of returning to where we were before Korea."

In the face of the world-wide yearning for peace, the vultures gloat over American bodies in Asia, and declare in their Wall Street Journal: "They all (Administration leaders) say that we need a shooting war, that for the task ahead of us a state of war is more desirable than a state of

peace. . . . When you begin to say "Peace, it's terrible!" you come at last to say "War, it's wonderful!" . . .

To which the most fitting expression of current cannibalistic thinking is given by their *Dun's Review*.

"Quite apart from its tragic aspect, the effect of the Korean crisis on business was salutary in so far as increased government expenditures portend an indefinite continuation of current high level economic activity. Business was more assured of stability in the economy . . . than at any time in the past few years."

There we have the answers from their own mouths. . . to why we are being asked to give up our sons . . . to take food from our children . . . to consent to a police state.

[fol 255]

THE PROFITS OF WAR

Part III

November 3, 1950

Two weeks ago we discussed the obvious fact that the military expedition of American imperialists in Asia has increased our cost of living, decreased our liberties, and brought us higher taxes and death—while it brings the greatest profits in all history to the United States corporations.

Last week, in answer to the question, "Why are such sacrifices, and greater ones, being demanded of the American people?" the ruling class spokesmen told us: "The forces which control our nation are engaged in an imperialistic conspiracy to force other nations to 'live our way' since we are the 'order-keepers of the world'."

Translated, this means that we have to smash in blood if need be the efforts of the world's colored peoples, and all peoples, to liberate themselves. Since this means war, they say, war is wonderful, and peace is terrible!

We come now to the third leg of the triangle, as it were: Why did the Truman Administration and the monopolies for which it is the agent decide to make war at this time?

Since history teaches us that ruling classes in the past have resorted to war to "solve" the economic crises which their own greed and incompetence have driven their nations into, we should examine the condition of the United States economy in the months preceding the intervention in

Korea last June. Let's look at some of the symptoms which generally reflect a country's economic health or illness.

Unemployment

In February, 1950, unemployment in the U.S.A. had reached 4,681,000—the highest point in nine years. Almost two million more than the year before, and it was growing at an increasing rate.

These are United States census figures, which notoriously underestimate the true situation always. They deliberately exclude workers who are "temporarily" laid off, part-time workers, and those on the fringe of the labor market (women, many Negroes, etc.) who are willing and able to work. The United Electrical Workers Union estimated that there were 1,483,000 workers in these three groups.

Official unemployment statistics also exclude those persons who are out of the labor force because of age or disability, but who could do useful work in a sane economy. These were estimated by the Federal Security Agency to number some 5½ million in April, 1949.

We may assert therefore that four months before the Korean war began there were at least 10 million unemployed persons in the United States. And, of the Negro labor force, 14.7% were unemployed, as against 6.8% for the non-Negroes.

In some major cities 25% of the labor force was unemployed in April, 1950—as bad as it was in the depression days. In California, Gov. Warren admitted to at least 474,000 unemployed last January.

Relief and Income

In Los Angeles County there were 52,033 persons on direct indigent relief last January, compared to 39,901 in January, 1949. As far back as June, 1949, a survey of 38 states showed that five had already put depression-style relief laws back on the books and seven cities had work relief programs.

When the workers' share of the national income falls too low, depression is inevitable. A Congressional committee reported that "In June, 1948, income for workers was 58.9% of the national income (compared to) the 55.9% level of

1929" which set off the big depression. (Imagine what it was in April, 1950.)

Between 1945 and 1948 the buying power of your wages fell 16%—the worst decline since 1911. This so reduced the nation's buying power that United States consumers could buy back only 70% of the nation's output—the lowest proportion in history. By contrast, national income rose 22% between 1945 and 1949, while net corporate profits rose 96%, and total wages only 16%.

But the real wages of workers in manufacturing industries fell 12% between 1944 and 1949, while the corporations averaged \$1481 profits per worker in 1948 as compared to \$470 per worker in 1939. Farmers' net income dropped 13% in the first nine months of 1949 alone, and the prices they were receiving were 20% below their post-war peak.

In the face of this sharp decrease in workers' income, the U. S. Bureau of Labor Statistics reported that the average family needed at least \$57.50 per week to maintain a minimum standard of living (just to keep alive), last spring. But official statements showed that nearly half the American families had less than that to live on.

(To Be Concluded Next Week)

[Vol. 256]

Scot-sboro Boy

The appearance of the autobiography of Haywood Patterson—one of the victims of the un-American Scottsboro frame-up—would be an event of major social significance at any time. But its publication at this time—in the period of growing danger for all minority groups, the period of our war on the colored peoples striving for liberation—makes it an event of political significance as well.

Over the years I have read, and reviewed, many books—but never one so unnerving as Haywood Patterson's account of his long ordeal. It is a shocking, revolting, maddening account of the frameup of nine innocent Negro boys and their persecution in Southern courts and prisons.

Completely honest, this book does more to reveal the basic degeneracy of Southern society, does more to expose the fascist structure of that area, than almost all the "scholarly" research studies made of the "Southern problem."

The book is an especially damning indictment of the jails and jailers of the South, and of the entire U. S. penal system. At any other period the appearance of such a report of how human beings are being tortured in our penal institutions would so jolt the conscience of the nation that it would lead to a revolution in America's penal system.

In a saner society such a book would have an effect comparable to the reforms created in America's treatment of her mentally-ill by that other famous autobiography, "The Mind That Found Itself" by Clifford Beers. But where the rulers are intent on turning the entire nation into a vast prison, such a book will be buried.

For, more than anything else, Haywood Patterson's report of Negro life in the South exposes beyond rebuttal the hypocrisy of America's pretensions to following the democratic way of life, and to teaching it to other peoples. Those who have not yet learned such lessons themselves can hardly teach them to others. "Scottsboro Boy" offers dramatic proof of the contention that the "Negroes know fascism."

That is why U.S. rulers dare not let such reports out to other nations, particularly the colored nations. And why they make such frantic efforts to cover up their crimes by appointing the "token" Negroes to various honorary posts, even in the U.N.—the international organization which should be using its powers to bring justice to America's colored people.

America in Miniature

What "Scottsboro Boy" does in its story of the brutalization of human beings in Southern jails and chain gangs, the exploitation of prison labor to enrich corporations and public officials, the use made of the torture of innocents to further the political careers of bigots—is to present us, in effect, with a picture of capitalist society in miniature.

What goes on in the prisons is only a sharper, more concentrated version of what is going on outside all the time. (The worst thieves and murderers are not in prison). This prison society is the logical, inevitable, outcome of the larger "free" society which idolizes the dollar more than human life, which enshrines material "success," and has only contempt for all cultural and spiritual values.

"Scottsboro Boy" should be required reading in every school. Every public official and police officer—especially members of Congress—should be obligated to read it. And the Rankins & Lanham & Byrnes should be forced to read it 100 times. A reading of it will help everyone understand Negro life and American history better.

In telling his story Haywood Patterson reveals himself to be a very brave man, a wise and sensitive man, a veritable mountain of courage. He is a man with a rare sense of humor, remarkable in one who has suffered so much. A proud man, with every reason for pride—for few men have achieved so great a personal victory over fate. The full power of Southern lynch society could not crush him.

His life thus exposes once again all the traditional lies about Negro "inferiority." He symbolizes the tremendous power and gifts the Negro people have to offer American life, and of which we have been criminally deprived so long by slavery and jimcrow.

By surviving the agonies of Southern "justice"—and telling the tale—Haywood Patterson has made a priceless contribution to the fight for democracy. The progressive forces of America have an obligation to protect him—as they helped save him—so that he can continue living, and fighting with us, live to enjoy the democratic privileges he has so richly earned.

[Vol. 257]

NEGROES KNOW FASCISM

At each new manifestation of American fascism—whether it is the jailing of a famous author or attacks on the peace petitioners or the denial of the right to bail—there is a painful shudder in the ranks of those Americans who've drugged themselves with the deadly refrain: "It can't happen here . . . and if it does, they don't mean me."

It would be hilarious if it were not tragic. For it not only can and is happening here—but one of the major reasons for it is that the USA has had a longer and more violent pre-conditioning for fascism than probably any other nation. As "Exhibit A" to support this charge, look at the lives of Negroes among us. (Or, at what we did and are doing to the Indians and Mexicans.)

The Negro people don't have to have fascism defined to

them. They know what it is. They live under it. Every significant feature of life under the Nazis is true and has been true of Negro life under American white supremacy.

Take the unconstitutional (and subversive) laws recently passed to compel the registration of every American who doesn't agree with the knaves in public office. It is doubtful if such legislation will seriously affect the lives of many Negroes in our country. Unconstitutional laws have persecuted them since the Constitution was adopted. And as for registration, their color automatically registers them at birth for "special treatment."

Consider the concentration camps and crematoria of Nazi Germany, the masterworks of the fascists—whom our government is busy restoring to power. The inhumanities there shocked the world more perhaps than the other Nazi deeds: Yet, those Germans guilty of them had been ordinary and average Germans. How did they become such monsters so quickly?

In the modern history of Germany before Hitler, it is questionable that the Germans had been conditioned by such inhumanities as have been practiced by average Americans on Negroes in the South and elsewhere for generations—the thousands lynched, burned, blinded, violated, chain-ganged, buried in unmarked graves.

All America Threatened

With such prior "training" Americans should go far. We may ask whether the "orange fruit" of this training isn't being harvested in Korea, when even Life and Time magazines report on our atrocities.

Or contrast the daily life of Negroes in the U. S. with the treatment accorded non-Aryans by Hitler's hordes . . . the sub-human status assigned to non-Aryans, their segregation in ghettos, their expulsion from political and cultural life, the humiliation of their children, the denial of jobs and food and medical attention and education—the denial, in fact, of life.

Is not each and every evil face of fascism listed above true of the Negroes' existence in America? Is it not proved in the Negro child's life expectancy, shorter by at least 10 years than the others?

All of this, and more, is in store for all Americans if we do not stop the drive to total fascism now being accelerated under cover of the Korean war.

One way of describing what is happening to the rest of decent America today is to say that they are all being given a taste of what it's been like to be a Negro in our democratic land. (And the chorus intones: "This is only the beginning . . .") It may be asserted that this would not, could not, be happening if white Americans had prevented it from happening to colored Americans.

There has been a vile perversion in our national thinking that the inhumanities heaped upon our Negro neighbors affected them only. A parallel perversion exists in the notion that the official hounding of progressives hurts only the progressives—that constitutional rights are being denied "only a little" to "only a few" people.

The truth is that democratic America is paying a grievous price for the sufferings of the Negroes—as she is for the persecution of her progressives of all colors. A nation can no more be "just a little bit fascist" than that certain young lady could be, as she told the judge, "just a little bit pregnant."

All Americans today must identify themselves with those of our fellow-citizens who are being persecuted. Each parent must see his child in the face and future of the colored child. Each one of us must see our fate, our country's fate, in the fate of America's democratic citizens. We must do so to enable us to stop fascism's advance.

We must never forget Walt Whitman's warning: "When liberty draws not the blood out of slavery, then slavery draws the blood out of liberty."

Raphael K. K. K.
[fol. 258] **WHO DO THEY THINK THEY ARE?**

There can be no denying the fact that the United States of America is more powerful now than ever in her history—and that in certain respects she is the most powerful nation in the world. Nor can it be denied that the USA today is the most fear-ridden nation in the world. All its mighty power seems to offer little comfort. Why?

Our country emerged from the victorious war over fascism the most favored nation on earth. None of our cities

had been devastated, our industries had multiplied their productive capacity, we had lost comparatively less of our manpower than any of our allies. The stage was well-set for an era of abundance and greater freedom.

Yet—five short years later this ~~great~~ vision is ~~maggot~~ ridden, destroyed. This most powerful nation, which promised so much, is afraid of its own shadow, its honored name is blackened wherever honest men live, its great strength is being dissipated in doomed ventures over the globe, its civic and social life is poisoned by an officially-inspired inquisition, the unity and pride of her people are being undermined—and her "leaders" are an immoral, terrified and desperate crew. Why?

Throughout the country, in our Capitol, in Michigan, in Georgia, in California, duly elected officials, sworn to uphold the Constitution and the Bill of Rights, are obscenely competing for the dishonor of betraying that Constitution and America's heritage. In Washington, Administration leaders join with outspoken enemies of democracy to secure passage of the Mundt-Ferguson-McCarran-Hobbs bills which would legally establish fascism in the land of Jefferson, Lincoln and *FRD*.

In L. A. County: the Board of Supervisors, elected "representatives" of the people, carry out a sneak attack on the people's rights—while contemptuously ignoring our real and urgent need for housing, adequate relief standards, fair employment practices, protection from storm-trooper police. (Which reminds us: Where was John Ford when the lights went out in L. A. County—this politician who has traded so long on his "liberal reputation"?)

In the L. A. City Council the same crimes are committed. Which proves once again, as it has been proved daily throughout the world these many years, that it is those in high places who are the quislings, betraying their trust and their nation. While it is the common people and their spokesmen—the Reuben Borroughs, the Margie Robinsons, the Paul Majors—who fight unrelentingly for the people's needs and rights.

It is true, as the treacherous press and radio and courts proclaim, that there is a subversive conspiracy in the land to destroy democracy. But it is not true that this Fifth

Column works so secretly. Many of its members are conspiring out in the open, with official encouragement, in the halls of Congress, in the boardrooms of corporations, in the legislatures of the states, cities and counties.

They Fear the People

Life has taught us that the really strong man doesn't have to go around always threatening others to prove his strength. The truly wise man doesn't feel compelled to convince everyone he meets that he is wise. The truly just man doesn't find it necessary to prove a thousand times a day that he is just.

Isn't it obvious therefore that what our misleaders, power-mad military and greedy financiers, are proving by their threats and attacks is not how strong they are, but how weak they are? Are they not demonstrating that they have no faith in their own propaganda and policies—for which they are asking us to give up our liberties and lives?

Isn't it obvious that this insanity is an effort to cover up their miserable failure to solve our nation's problems—that it is a frantic attempt to escape the people's wrath? Having failed in their global gamble to "contain Communism," they are trying to contain the American people and American democracy—which, as is evident, has been their primary goal from the first. Certainly one major reason for the Korean war was to provide an excuse to speed up (expedite) their war against the people of America.

Can any intelligent person believe that—in L. A. County, for example—where there is almost official immunity guaranteed any cop who kills a Negro or Mexican, the Board of Supervisors is "defending Americanism" and serving you and me by passing laws (in secret) to prevent us from thinking and holding free elections?

Who Do They Think They Are?

Dare they tell free Americans that it is illegal to speak and write and vote freely? Do they believe that they are above criticism—that the criticism of a Jessup who urges the killing of our youth is unpatriotic? This is the disease of dictators!

Our reply is: Just as we refused to collaborate with German and Japanese and Italian fascists in the last war, we will continue to defend America by refusing to collaborate with American fascists!

[fol. 259] The Minorities And The Majority. *Robert M. La Follette*

It must be one of the major ironies of history that in the U. S. A., the democratic nation in which the minorities have always been considered "inferior" by the majority, it is the members of the embattled minorities who are the most active fighters for democracy.

It is the Americans of Negro, Jewish, Mexican, Slav, Irish parentage—and all such—who will save democracy. For the members of the "superior" white majority seem to have given up the fight with little struggle, and are now accommodating themselves to creeping fascism.

It is the Americans whom bigoted neighbors have for generations subjected to violent discrimination, prevented from living full lives in dignity, and to whom they have brutally denied the opportunity of contributing their utmost to our nation's growth—who are now safeguarding that nation and who will, in the process, save the lives of many of their persecutors.

This, of course, has been true in America since America was founded—from the day of Crispus Attucks to Harriet Tubman to Paul Robeson. It is symbolized in the lives of a Justice Brandies and a Congressman Marcantonio. It is dramatized by the lives of the nameless millions who through the years have cleared our forests, built our industries, created our culture, and fought our wars.

We're For Peace

What brings this forcibly to our attention now is the participation of our minority Americans in the fight for peace. In Los Angeles, for example, wherever you go, if you are of the minorities who are in the forefront circulating the petitions and speaking up for peace. It is in the *the* minority neighborhoods that the men and women, young and old, are readiest to sign the petitions. They are not afraid. But in the "superior" white neighborhoods, too many of the people shy away from the peace campaign as from the plague.

In every sector of the home front's struggle—be it a battle for FEPC or the life of Willie McGee, a fight against the Taft-Hartley bills or for democratic trade unionism and a people's political party—it is the belittled citizens who are the better citizens. We of the minorities are the first and boldest fighters for the welfare of our nation.

And bravest of the brave are our women. Victims of the threefold curse—exploited in this society as women, as workers, as minority people—they are the outstanding leaders, the tireless soldiers in the ranks, the wisest counselors in our democratic people's army. The role of their women in the Negroes' never-ending fight for liberation is a prime illustration of this. It is to our women that we and the world will owe our victory.

We'll Save The Peace

To us of the minorities has fallen the task again of defending and strengthening the democratic foundations of our land. That is the fact—the reasons for it can be discussed another time.

The term 'minority' in this situation is really inaccurate. For the 'superior' whites (compared with the total in our minorities) are no more the true majority in the U.S. than they are in the U.N.—where, it is pertinent to note, a majority of votes in the Security Council "legalized" the intervention in Korea.

The vote of the Norwegian representative (of only three million Norwegians) who favors bloody intervention is considered equal to that of the Soviet delegate (representing 212 million people) who opposes the intervention. The U.S.S.R., India and China, comprising half the population of the world, have less than 10 per cent of the votes in the U.N. That is why the U.N., formed to speak for and defend all nations, could be turned into a weapon for global white supremacy.

Yes, all over the world we are setting an example to the "upper" classes in all the elements of decency, honor, wisdom and courage. Everywhere we are exposing the hollowness of white "superiority"—the centuries-old lie in the domination of the white "majority."

The inescapable outcome, of course, is that we of the minorities are becoming the majority in fact, the majority

in power—as we have been the majority in numbers. We will inherit the great world we have built.

Joseph P. Kamp
[fol. 260] WHAT'S WRONG WITH PEACE? *August 25, 1946*

Has American history ever witnessed a more immoral episode than the directed attacks on the campaign for peace?

There have been other periods when those in control of our nation have sunk to the most hellish depths of infamy—for example, in their support of slavery and in their betrayal of the freed slaves during Reconstruction days—but never a more immoral period than now when they want to make peace itself un-American.

In H. (for Hoover) Truman's "Christian nation" the Prince of Peace, the founder of Christianity, would be jailed for treason.

Such a hate-filled war on peace and brotherhood could be engineered only by those who have lost all faith in their fellowmen and democracy, who have lost all civilized attributes, who have ceased to be human beings. They have become beasts. They are fascists.

The bi-partisan smearing of the peace campaign, abetted by those who have pretended to moral leadership in our land—yea, even the Federal Council of Churches of Christ, the Synagogue Council of America, the National Catholic Welfare Conference—and have Judas-like betrayed our trust, is of course an inevitable development of the cold war.

We can see that the silencing of the liberal voices on the air, in the press and movies, the jailing of trade unionists and leaders of the Communist Party, were necessary to the bi-partisans to kill opposition to their war drive. Now they want to crush those who still have not been intimidated.

A government which commits itself to a domestic and foreign policy based on brute force—material power and an assumed monopoly of atom bombs—will inevitably try to outlaw peace. Now it is attempting to belittle the dangers of its own superweapon in order to prepare us to accept more readily an atomic war.

The very casualness with which government spokesmen and owners of the press and radio are offering us advice on "what to do when the A-bombs fall" is more than horri-

lying. It damns them as forever outside the pale of humanity. They have already given us up for lost....!

PEACE IS GOOD FOR PEOPLE

Why don't they work as hard for peace? What have the people of America to fear from peace? Would peace destroy our sons and our cities? Would it deprive us of homes and jobs? Would it make the lives of our Negro and Jewish and other minorities more insecure? Is it not clear that the best and highest form of Americanism today is to campaign for peace?—

The peace-haters say they would favor peace, if it were an "American peace"—and they damn the present peace campaign as "Communist inspired." While we're not aware that peace too has become a Wall Street monopoly, and it is difficult to understand that there can be an American peace different and separate from world peace, we must answer them with: So what!

While the facts show simply that a group of freedom loving men and women gathered in Stockholm to initiate the peace campaign, and needed no orders from Moscow to love peace—we must assert: So what! What if the Soviet delegates participated in that conference? Does that make peace unclean? If the Soviet leaders want peace, must America's officials automatically react with war?

If our leaders are so concerned about the USSR's support of such movements, why wasn't the world peace campaign American-inspired? What a wonderful thing this could be! Wouldn't it be a more certain way to win us moral leadership of the free peoples than to arm their oppressors everywhere, imprison our best minds, and call on our youth to form an "army of killers?"

So what if the Communists prefer peace! We want peace too—and the more who demand it the surer we are of getting it! We're sick of this national insanity which dictates that we don't dare do a decent thing if the Soviets are doing it—or if we do such a thing we must justify it by claiming it will help "stop those — Russians!"

We reject this suicidal corruption of the American way of life. We reject this phony Americanism which can stom-

ach the police slaying of Negroes and the freeing of Nazis for "good behavior" while inspiring force and violence against good Americans who work for peace.

[fol. 261] **NEW CRUSADERS**

We charge the haters of peace with Satanic sacrilege in declaring—as does a Drew Pearson—that our drive to war, our creation of another Spanish tragedy in Korea, is the American way of practising the teachings of Christ, a new crusade.

We proudly claim that it is we who circulate the petitions and speak up for peace who are the new crusaders. We boldly join with the 260 million good men and women all over the world who have already signed the peace pledge. For ours is the way of life . . . and in the spirit of the faith which the killers of peace betray, we promise:

They shall not be forgiven
For they know what they do!

**ACCOMPLISH YOUR MISSION!
SIGN THE PEACE PETITION!**

[fol. 262]

Raphael Konigsberg
SUCH A VICTORY!

The boastful accounts of U. S. "victories" over the USSR in the current United Nations meetings reminds one of the French general who lamented, after one of his country's wars—which France won, but lost much of her manpower and resources in the process: "Another such victory and France will be no more."

The press reports that the U. S. "stole a march on the Russians" by proposing condemnation of North Korea as the first item on the agenda—that this was "calculated to provoke the Russians"—that this move had the "obvious purpose of putting Russia on the defensive . . ." When the Soviet's effort to expel Chiang Kai-Shek's hatchet-man was defeated, we are told that "The Soviet delegate took his defeat calmly."

One may well ask, Who was defeated in this action? Was it Mr. Malik who sought to obtain representation in the UN for the Chinese Republic, which must be seated sooner

or later? Or, was it Mr. Austin who used American power to defend the Chinese traitors, whom his own State Department has damned as corrupt and undemocratic?

Whose action was calculated to uphold the charter of the UN and save it as an instrument for peace and justice? Malik's, who urged the admission of the new China so as to rebuild the only kind of UN which can achieve a constructive solution to the Korean tragedy? Or Austin's, who fought to perpetuate the dishonesty and illegality of the UN's conspiracy in Korea?

'Sense of Guilt?'

Why didn't the American representative answer Malik's charge that we are guilty of aggression in Korea? Surely this charge reflects on our honor and should have been met as least as bravely as Austin defended the murderer Chiang. Some people may think that all this argument over the agenda and Chiang was a diversion to keep from answering that charge. And others will wonder if the calculated efforts to provoke the Soviet Union is the best way to prove the sincerity of our professed aims in Korea.

What kind of satisfaction or moral prestige can we derive from a purchased parliamentary victory? Our paid clique can give us majority votes from now till doomsday—but the people whom they are supposed to represent will not. It will be doomsday for our planners if they build their policies on any contrary assumptions.

What is it we are so hotly defending in Korea anyway? Our officials say it's the South Korean government, "a truly democratic government" in the eyes of the bi-partisans who built it. (Gov. Warren says it's really Russia we're fighting in Korea.) But the South Korean government was defeated in the election held just a month before it provoked civil war. Syngman Rhee's party got just 22 seats (11%) out of a total of 209 in the Congress. This despite Rhee's use of troops and terror and arresting opposition candidates.

If it's not the government we're defending, then it must be the Korean people. But, can we say we're defending them when they so decisively rejected the Rhee gang (consisting of traitors and Japanese collaborators) which we foisted upon them? The refusal of the vaunted South Korean army

to fight and the widespread resentment against our intervention in their civil war gives us the answer.

The Simple Truth

We are left fighting the Korean people—with the arrogance of the white supremacists. We are fighting a people with a recorded history of 4000 years—who used moving metal type for printing 50 years before Gutenberg, who built iron-clad ships 300 years before we made the Monitor and Merrimac. These people our laws say are unfit to become American citizens—and we claim we are at war to defend their liberties.

The simple truth is that this Christian nation (as Truman describes it) is trying to take up the unholy "white man's burden" which the British, French and Dutch tyrants are no longer able to carry. This is a futile effort to reverse the course of history.

[fol. 263] That this is the purpose of our Korean gamble is proved by Truman's original orders to intervene in Formosa (which even the British are objecting to). It is proved by the announcement that "The U. S. has decided to give full diplomatic support to Nationalist China"—which the U.P. dispatch calls "a diplomatic about-face." And it is proved again by the press trial balloons on August 5 stating that MacArthur believes that "American efforts in Korea will be useless unless the U. S. is ready to meet the Communist challenge everywhere else in Asia . . ."

This time MacArthur isn't just shooting his mouth off. Are we prepared to go to war with 450 million Chinese, the 80 millions in Indo-China, the many millions more throughout Asia? Is the United States prepared to take on all the colored peoples of the earth—who constitute two-thirds of mankind? Has the slave-holding mentality of the South become the basis of America's foreign policy as well as its domestic scourge?

What madness is this. Do our Forrestals in the government think they will succeed where all other tyrants have failed—even with their atom bombs? Do they think that the oppressed millions, who at last are building a better life for themselves, will welcome us, will welcome a new op-

pression? They will fight. And the lessons of history show that we would lose.

Surely, the energy and lives and resources which we are expanding in this Asian adventure are worthy of a far more honorable cause than the evil Chiangs and Rhees and the white man's ancient curse.

[fol. 264]

LOTS OF PLOTS

Contempt for the intelligence of their countrymen is a characteristic of fascists everywhere. Arrogant with the power they derive from control of the nation's economy and government machinery, especially the police and armed forces, they feel that the people can be cowed into accepting the rulers' ideas and evaluations of every situation—as well as their standards of conduct.

The rulers come to believe their own propaganda about their infallibility. Drunk with a sense of superiority, they assume that we will accept their words and opinions as gospel truth because they utter them. They think their power alone is enough to convince and lead the people, that they don't have to be concerned about logic or elementary honesty or fair-play.

Nothing proves this so strikingly as their desperate attempts to discover plots, any kind of plots, anywhere, to "justify" their cold-war preparations and hot war maneuvers. Let us look at only a half-dozen of the more recent ones—each an insult to our intelligence and evidence of their moral bankruptcy.

Plot No. 1

The efforts of decent Americans to eliminate Jim Crow and second-class citizenship and correct the injustices heaped on the Scottsboro boys and the Willie McGees are nothing but Communist plots to discredit the American way of life—to create issues so that the Communists can appear as defenders of democracy.

Another version of this one is that in resisting storm-trooper attacks—as in protecting Paul Robeson at Peekskill—the responsible citizens there were incited by the Reds (who really "planned the attacks in the first place") because they wanted to become bloodied martyrs.

Plot No. 2

The momentous world-wide peace campaign is an "insidious Red plot to soften up Americans, so as to leave us defenseless in the face of an imminent invasion by the Reds." (In history's book the Washington-inspired campaign to discredit the global peace movement will be recorded as one of history's most immoral acts.)

According to the hot-warriors, the response to the peace drive couldn't possibly be an expression of the people's longing for peace and life. The bi-partisans' counter-attacks couldn't possibly be motivated by fear of peace settlement at a time when they want war.

Plot No. 3

Whenever Washington, Wall Street and Winchell want to sink more billions into armaments they can find convenient plots to generate a war scare—Soviet subs in the Los Angeles River, Soviet schemes to blow up the Panama Canal or to invade Iran or steal our atomic "secrets." This couldn't possibly be an effort to bolster our sagging economy or equip us for foreign gambles.

Plot No. 4

"Red Imperialism" is ceaselessly expanding, threatening to engulf the earth—which explains why the USA now dominates with guns and ships and dollars more areas and bases and ports around the globe than any nation in history. We are protecting these places from the Soviets—without a thought of exploiting their natural resources or their people.

An extension of this plot is the charge that the efforts of colonial peoples in Korea, throughout Asia, Africa, South America, to free themselves is directed by Moscow—and couldn't possibly arise from the desire of these oppressed men and women to liberate themselves, as American colonials did in 1776.

Plot No. 5

The USSR is forcing the USA to spend billions for armaments for itself and to arm the world's reactionaries

in a deep-laid scheme to bankrupt America. (You figure this one out!) Innocent, powerless, bi-partisans! All their actions merely reactions to moves dictated in the Kremlin. We have no initiative, no freedom of action, no foreign policy of our own.

Plot No. 6

There is a dark plot to overthrow the government of the United States. So the leaders of the Communist Party of America are imprisoned, along with many other Americans (whose numbers will increase) who don't agree that the bi-partisans are the wisest, most honorable, most patriotic Americans. The jailings couldn't possibly be due to the fascists' frantic fears of permitting any open opposition to their plans, to their fear of Americans learning the truth.

**FOR ONCE THE BIPARTISANS ARE RIGHT.
THERE IS A PLOT TO OVERTHROW THE CONSTITUTION AND GOVERNMENT OF THE UNITED STATES. BUT IT ISN'T THE JAILED AMERICANS WHO ARE THE PLOTTERS.**

[Vol. 265]

Raphael Rodriguez
The Greater Loyalty *July 28, 1950*

Always in a testing time the timid fall away. It is easier for them, at times such as the present, to seek the seeming safety of silence than to continue fighting for their principles. To be silent is easier than to buck the hysteria and threats of evil men in power.

As such times the faint-hearted grasp eagerly at the thinnest thread of plausibility or "legality" in the arguments of America's quislings in order to justify their own abandonment of the obligations which American citizenship and humanity place upon them.

It is a sad spectacle to see them, now that the cold war has become hot; rushing in to support Truman's intervention in Korea with the argument that the concept "My country right or wrong" takes precedence over any moral or ethical obligation.

Or, if they still cannot stomach the Potomac Pilates, they seize upon the claim that since the castrated UN sprinkled the blessed water of its endorsement on the Korean adven-

ture, then falsehood is truth. They convince themselves that thus their own transgression is sanctified—and they don't have to think or feel any more.

To consider loyalty to America as identical with loyalty to Truman, Dulles & U. S. Steel is, to me, the ultimate in sacrilege. Truman, Dulles & U. S. Steel—saboteurs of Americans' constitutional liberties, of peoples' self-government everywhere, of the hopes promised mankind by victory in the last war! Lynchers of Americans and engineers of the doctrine of guns over butter!

Is this what America means today?

It is significant that Truman & Dulles are leading religionists, who insist that ours is a Christian nation—tho the Constitution says otherwise. Both repeatedly proclaim their religious convictions—and just as frequently violate them. They use appeals to religion to camouflage their sins.

The other day Holy Harry told the Baptist World Congress: "The nations of the world . . . cannot survive materially unless redeemed spiritually . . . what we need today is a revival of religion and a rededication of this nation . . . to the undying truths of the Christian religion."

This from a man who loves not his fellowmen but threatens them with atomic hell, who is violating our Constitution and the sanctity of our homes by sending our sons to death in an inhuman gamble!

Is this hypocrisy Americanism today, or "Christian truth?" Or is it serving Mammon and Meloch? Can any sane person be "loyal" to such men, such sinfulness?

Loyalty to America, in my opinion, has always meant adherence to the basic principles of our Constitution and Declaration of Independence—not loyalty to any man or group of men. Loyalty to America means belief in and militant support of her noble ideals and the faith of her people. Loyalty to America today, therefore, must mean opposition to those who are betraying our country's traditions, who are squandering her manpower, her honor and her riches.

Would it not be greater loyalty to America today to call for the expenditure of \$10½ billion to make schools and homes and hospitals and jobs for Americans than to waste it in foreign intervention?

To embrace the doctrine of loyalty to a current pack of

office holders as a means of saving one's self is to repeat the suicidal conduct of those Germans who refused to oppose the Nazi drive to power. They claimed that since the Hitler government was the government of Germany, whatever it decreed was "legal" and therefore a German citizen had to obey.

While in Germany during the last war, I knew a German radio technician who told me one day: "You Americans should have come here ten years ago—to save us." I asked "What did you do to save yourselves?" He muttered "What could we do? The Nazis killed everyone who protested." At which I exclaimed "They killed many of you anyway—and for what? If you'd fought back, more of you would have lived, and you might have stopped Hitler and prevented the war." He just shrugged.

[fol. 266] Will Americans talk like that German, ten years from today—or five? Who will come to save us?

Certainly it is harder to fight back than to be silent. (Did anyone ever promise you that being a good citizen is easy?) Whatever silence or collaboration gains is only fool's gold. For there is no real security in either.

Today you may get by just for keeping silent. But tomorrow you will feel impelled to extol the Bi-partisans' program. And the next day you will be forced to give material evidence of your affection. And the day after that you will have to join in their war against the American people—or you will pay the full price too, along with others who wouldn't kowtow to them in the first place.

No democratic American can be safe today unless we are all safe. Only if all men and women of goodwill stick together bravely will our nation be secure. To fight the Bi-partisans' program today is the highest test of loyalty to America.

They can't jail us all. They may succeed in driving many of the best Americans into exile—to form, on a friendlier soil, a government-in-exile for a Free America. But this will not happen if we fight back now . . . as heroically as Americans fought the British and their Tories in our first revolution . . . as boldly as Americans fought the slaveholders and their Copperheads in our second revolution.

Every American, they say, can aspire to the Presidency. We know this isn't true—but, we have all hoped, at some time or other, that it would come true for us, if only for a little while. Then we'd "show 'em!"

If I were president, this is the program I would urge upon the people and the Congress, at this time—in the conviction that it would meet the needs of all Americans and enable our nation to make its greatest contribution to the security and peace of the world.

For convenience sake only, the following proposals are divided into "domestic" and "foreign" programs. We know there is no fundamental difference between the two: they are simply opposite sides of the same coin. Any government which is reactionary in its foreign policies (as is the Truman administration in Korea) cannot be progressive in its treatment of Americans at home (observe the repeated double-cross on FEPC.). A government which truly serves the welfare of its own people will be furthering the welfare of all nations and world peace.

Domestic Program

1. *Immediate 25% wage increase, and one dollar minimum wage, in all industries.*

An average raise of 25c an hour would pump \$19 billion in purchasing power into our sick economy. This would lead to increased demand, more production—and about 4 million new jobs. This raise would have to come out of profits, and would leave the corporations piling up profits at the pre-war rate.

2. *Pass FEPC!*

3. *Thirty-hour week with no reduction in pay.*

This is urgent today, with about 10 million workers wholly and partially unemployed, with the great increase in workers' productivity, and with the soaring profits being created by the workers' eight hours in the factories.

4. *Repeal Taft-Hartley!*

5. *End inhuman speed-ups in the factories.*

Workers must be given a more responsible share in the management of industry. Didn't the labor-management committees during the war prove the great value of this?

6. *Restore and increase veterans 52-20 allowances.*

7. *Immediate rent freeze.*

Restore rent control to areas already decontrolled, and make it more effective.

8. *Liberalize all relief allowances.*

9. *Expand the social security programs.*

- Increase unemployment insurance to at least \$40 weekly nationally, to last as long as the worker is unemployed.
- Extend its coverage to all workers. Ten-year hospital construction program. Increased federal aid to education. Such a program would of itself raise the living standards of millions of Americans—and make more jobs.

Help Workers and Farmers

10. *Help the small farmers with such measures as the Brannan Plan.*

Distribute surplus foods to the needy. Stop the profiteering of the food trusts.

11. *Help the migratory workers.*

Establish minimum wages, regulate their contractors, extend workmen's compensation and the social security laws to cover them, Etc.

12. *Eliminate the whole "loyalty oath" and witch-hunting programs.*

Pass civil rights laws—and use the federal troops if necessary to enforce them. If we can send the U.S. Army and airforce to Korea to "save their freedom," why not use our forces to ensure freedom for Americans?

13. *A vast public works program.*

Two million homes a year. Slum clearance. Regional planning authorities in all the major river valleys (like TVA). Flood control, etc. Highway improvements alone would furnish 950,000 jobs for ten years. The production and marketing of goods purchased by the people so employed would provide over one million jobs for ten years.

[fol. 267a] 14. *Develop atomic energy for peaceful purposes (No A or H bombs!)*

Atomic power could lower the tops of mountain barriers which prevent the passage of rain clouds—and thus make fertile millions of desert acres in California and all the West.

15. *Break monopoly control of America's economy and political life.*

Nationalize the public utilities, steel and armaments industries. Eliminate withholding taxes on all incomes of less than \$5000 yearly, and increase taxes on large profits.

16. *Stop the militarization of our nation.*

Remove the military from civilian and diplomatic posts. Reduce the arms budget. No peacetime conscription.

FOREIGN PROGRAM

17. *Stop the cold-hot war.*

Settle the differences between the USA and USSR—the key problem of our time.

18. *Strengthen the United Nations.*

19. *Recognize the New China and establish trade relations.*

Stop trying to weld it into an instrument of U.S. world domination. Withdraw our forces from Korea. Cancel the Marshall Plans, the N. Atlantic Pacts, etc. If we really want to raise the world's living standards, let's do so through the UN.

This trade—and renewed trade with the Soviet Union and Eastern Europe—will create about 3 million jobs for us.

20. *Prevent the remilitarization of Germany and Japan.*

21. *Stop subsidizing reaction all over the globe.*

Let's help the growth of democratic people's movements, instead of trying to throttle them. Let American democracy support world democracy.

Such a program, it is true, would cost us billions of dollars—which would be an investment in our security and world peace. We are wasting billions in foreign adventures and armaments—and what are we, the people, getting out of it? More dead sons and sacrifices?

What is it worth to us to have a secure America in a world at peace?

Free Lawson, Trumbo, Dennis, East
or this year of freedom may be your last!

*Write the President!

[fol. 268] **IN HONOR OF THE AMERICAN
REVOLUTION**

On July 4th—in 1776—the American people concluded a successful revolution against their British oppressors, and adopted a ringing Declaration of Independence which proclaimed for all ages "... Whenever any form of government becomes destructive to these ends, it is the right of the people to alter or abolish it and institute new governments."

On July 4th—in 1950—the inheritors of this glorious legacy were dying 5000 miles from America, in an effort to prevent the Korean people from achieving their revolution and their independence.

American troops were being used as the British used their Hessian mercenaries against us—in an open and doomed scheme to delay the inevitable liberation of a long-suffering nation, whose cause is just. (And irony of ironies, the land of jimerow is using colored troops to shoot down other colored folk seeking their freedom!)

The Koreans have been fighting for their liberty for generations—against the hated Japanese tyrants and their own traitors, and now they must fight again, against the

Americans who came into their land as liberators! The Korean Independence News asserts: "Inflation, starvation and bankruptcy of the people, coupled with corruption and tyranny of the Syngman Rhee regime, have driven the entire people to the brink of revolution."

By their actions in Korea the officials of our nation—born in revolution—are denying another people the same right to revolt we claimed for ourselves and which our great men have declared to be the great tradition of democracy.

By their actions in Korea, U. S. officials have forfeited all right to our trust. They are deceiving and misleading us:

1) It is now clear that the war in Korea came as no surprise to Washington. At this late date we are told that for many months, and as late as one week before the S. Koreans launched their attack, the Korean People's Democratic Republic (with headquarters in N. Korea) made comprehensive offers for peaceful unification of the country.

2) The United Press reports from Washington that "The day-by-day widening of the scope and intensity of the American effort in Korea is arousing criticism here and elsewhere that Truman is withholding from the public available facts of the situation."

3) The Chicago Sun-Times claimed on June 30th that the Korean war was used by the Truman Administration to initiate an open policy of "armed intervention in the Pacific." This has not been denied.

4) On July 10th it is reported that the sensitive Truman may send to Congress "a plan for a new propaganda war against Russia to offset the Soviets' claim that U. S. aid in Korea is 'imperialist aggression'."

5) One day Truman told his press conference that there was no present need to mobilize the organized reserves. The very next day he authorized the armed services to draft men . . .

The Korean Gamble

So—Gambler Truman's bluff has been called and his play to "drive a bunch of bandits" from tiny Korea has developed into a war requiring the mobilization of a mighty nation's manpower and resources. What shame. What dis-

honor! If this doesn't turn out to be the great deception of the 20th century, it won't be far from it.

Historians will be amazed that the evil men who engineered this fraud were not impeached and driven from public life!

By initiating the policy of "armed intervention in the Pacific" American officials are betraying the best interests of their own nation as well as violating our solemn pledges during World War II to allow all peoples the right to set up governments of their own choosing.

All the Pentagon brass and Wall Street gold cannot prevent much longer the age-old need of the colored peoples—including our own—for security, freedom and justice. All the White House satellites and Yankee guns cannot much longer prevent the historically-necessary drive of the earth's oppressed—including America's Negroes—for land and bread and dignity.

[fol. 269] To try to reverse history is as ignoble as well as hopeless madness—as we should have learned in China. A fate similar to ours in China will strike us sooner or later in Korea, and wherever else we try it.

Above all, it seems to me, the Korean gamble exposes the complete bankruptcy of the Republican-Democrat cold war program. We were promised that the cold war would bring America universal moral leadership, would economically reconstruct Europe, would bring peace to the world. We have been deceived on all points. How can any reasonable person now have confidence in these misleaders?

Now that their policies have proved to be total failures, the bi-partisans try frantically to cover-up their treasonous incompetence and find scape-goats on whom to divert the wrath of Americans.

They can't give us jobs, so they offer us guns. They can't give us homes, so they offer us caves. They can't give us life, so they offer us death.

They hope to solve our inevitable economic crisis with a new war. (Did you read about the stock market falling at the mere suggestion there might be a peaceful solution in Korea?) But this time the drug of war won't work so well. It's been tried too often—and the crises are coming more rapidly and will last longer.

PROGRAM FOR PEACE

The only course for us all is to fight for peace even more selflessly than we did for survival in the last war. Sign the peace petitions. Get others to sign them. Write to the President. Get others to write.

Let us demand that Truman and the Congressmen—our servants, not our masters—drop at once their suicidal course and adopt one that is in America's interests. Demand of the President and Congress that we immediately:

1. *Remove all our forces from Korea.*
2. *Make it possible for the UN to function legally by agreeing to the admission of the new Government of China.*
3. *Arrange top-level discussions between the U.S.A. and U.S.S.R.*
4. *Agree to outlawing all atomic weapons.*

We must act now—or our own children, if they survive, will hate us for not having had the courage to safeguard their future. If we don't act for peace, our children will hate us because in exchange for all the wondrous promises of the American Revolution we will have left them only an atomized wasteland.

[fol. 270]

TRUMAN, TELL THE TRUTH!

Why are Americans dying in Korea?

That is 5000 miles from the USA, though on the very doorstep of China and the Soviet Union. What business have our troops there? Why are we at war?

Since the sole source of information about the outbreak of hostilities comes from the North and South Koreans—both of whom charge the other with provoking the conflict—dare we assume the S. Koreans are right? Isn't there at least an equal chance the other side is telling the truth? It was solely on the basis of the S. Korean stories you demanded action and the UN acted.

Is it possible the S. Koreans created the incident to bring in outside help for saving its tottering government—one that is as hated by the people as were the Japanese overlords? It is the S. Koreans who have been making war

threats, not the N. Koreans, especially since Syngman Rhee and his gang virtually lost the election in May 1950.

Impartial observers, reporting the corruption and oppression of the Rhee government, declare that it is a puppet of ours, if ever there was one. Do you think it would dare to make a war-like move without prior approval of your administration? Can it be that Dulles, Johnson and Bradley, who conferred with them just before the battle began, gave pledges of US support? Is it a coincidence they were there at the time?

By what authority did you plunge us into war? Did you not exceed your constitutional powers? We've been taught that only Congress can declare war. When the U.S. agreed to the UN charter we didn't agree that it would supplant our constitution. Therefore, even a legal act of the UN doesn't take away Congress' exclusive right to declare war, does it?

Can you claim you're acting under UN authority when the charter declares that the Big 5 on the security council must vote unanimously to make an action binding? The Big 5 weren't together on this, were they—not with the USSR absent and Chiang's Formosan henchman presuming to speak for 40 million Chinese?

Is it not going to seem odd to many people that in this case we desperately drape the mantle of the UN around us—while we ignored the UN when it suited our purpose, in Greece, in N. Atlantic Pacts, in Marshall Plan maneuvers?

Tell us the truth, Mr. President!

How do your ceaseless edicts that the Soviet Union is an aggressor threatening Western civilization, and solely to blame for lack of peace, jibe with reports that you took the "gamble" of intervening in Korea because you figured Russia would not go to war? These aren't poker chips you're gambling with but my children's lives and bodies!

You associates freely confess their great relief that Russia and China have not reacted to this provocation with military force—of which they have considerable. If Russian troops and planes intervened in a Mexican or Canadian civil war would your administration be as calm and sane as the Russians in the present situation?

Rememberest thou the insanity of Forrestal—when he

ran down the street yelling the Russians had landed? (They're no more in evidence this time, are they?) Will not people wonder—if it could happen to the Secretary of Defense it could be happening to other government officials, and ask if a similar madness does indeed possess them now, which could lead the nation to destruction as it lead Forrestal?

What answer have you to the Russian charge that the U.S. is guilty of "a direct act of aggression?" In view of the iron curtain on news from N. Korea isn't it as reasonable to accept the Soviet version as Washington's?

Should we learn later that there is some basis to this charge, Acheson's claim that what happened in Korea is "the most cynical, brutal, naked, unprovoked aggression that could ever occur" will certainly be true. But Secretary Johnson's boast that your actions represent "the finest hour in American history to date" will hardly be the verdict of honest men or history, will it?

Americans have a right to demand the truth of their president?

If it is true, as you assert, that "we are not at war... we're just driving out a bunch of bandits who've invaded Korea," why did you order our armed forces to intervene in Formosa and Viet-Nam? Didn't you promise we'd no longer help that bandit Chiang?

[fol. 271] Since Formosa is as integral a part of China as Staten Island is of the USA, isn't your order a declaration of war against the Chinese republic too? And isn't it intervention in Viet-Nam's civil war? (Will Americans be dying there next?) If we're capable of intervening in one civil war, might it not be assumed that is what we're doing in Korea?

What truth is there to reports that Chiang and the U.S. have a secret pact calling for the invasion of the Chinese mainland by American and Japanese troops? Could your Korean "gamble" be the prelude to a vast plan for thwarting liberation movements throughout Asia, and Africa?

Is it conceivable, Mr. President, that your Korean adventure is the American version of the Reichstag Fire?

When we recall how convenient that fire was for the Nazis, disturbing parallels strike the mind, do they not?

Already the fascist Mundt-Nixon bill is being pressed again, Congress appears likely to give you billions more in arms, and we're told that you have "ready for submission to Congress" in case war results from the present Korean situation . . . a war powers act more extreme than any the U.S. has ever had . . . said to make the President a virtual dictator."

How convenient a "counter-attack" the Korean war is against the growing peace forces in this country and the world against Trygve Lie's peace mission. How convenient a stroke it is for getting people's minds off grave unemployment, the jailing of political dissenters, the legal lynchings of our Negroes, the death of freedom of schools—the failures of your administration to meet our nation's needs.

In another war your reward to Americans for their victory over fascism's forces only five years ago? Will the cold war against the people of America become a hot one?

For your sake, for America's sake, for the sake of mankind—Truman, tell the truth!

Raphael Rosenberg

[fol. 272] EDUCATION FOR —

June 23, 1950 will go down as one of the blackest days in the history of American Education. This is the day the University of California regents fired 157 teachers and other personnel for refusing to bow before them and permit the regents to decapitate their birthright.

There have been attacks on our schools before—since the reactionaries have not really wanted the people's children educated. But never such a wholesale massacre. Teachers are being fired for teaching. Their salaries are a national disgrace.

School buildings and equipment throughout the nation have long been in miserable condition. Classrooms are grievously overcrowded. But a Congress and administration which appropriates almost 80% of our national budget for war purposes can not find one penny for education.

Obviously in a country being regimented it is dangerous to permit freedom of thinking and teaching. Chancellor Robert M. Hutchins of the University of Chicago asserts: "The miasma of thought control that is now spreading over

the country is the greatest menace to the U.S. since Hitler." And Harvard's Dr. Kirtley Mather comments that the attacks on our educational systems are "ominously reminiscent of the techniques used by Hitler in the first years of his Nazi regime . . ."

Who are these regents who set themselves up as arbiters of who is fit to teach and what our children may learn and think?

A. Diannini—whose family and bank have long been identified with Mussolini and his program. A John F. Neylan—long the attorney for the un-American Hearst. An Earl Warren—front for all that is reactionary in our state and nation.

Can any intelligent individual believe that persons such as these, who control our schools, will permit the schools to prepare our children to become the informed and articulate defenders of democracy—which the safeguarding of our country and our lives demands?

Three years ago there was published an important study entitled "Men Who Control Our Universities" by H. P. Beck. In analyzing the background of the 734 trustees of the 30 leading American universities, he found that not one of them was a Negro, not one was a worker, only 3.4% were women, only 1% were farmers, only 36 of the total were educators—while the largest number were directors and executives of big business and high finance.

These are the rulers—the school boards who are trying to cover up the wretched conditions of our schools by intimidating the teachers. These are the kind of men who are making certain that—in the words of Prof. J. J. DeBoer of Illinois—"The drive against free teaching today is being coordinated with the drive to world war."

This is evident too in the increasing militarization of our schools . . . in the transformation of generals and jingoists into college presidents; in the emphasis on ROTC, in the growing dependence of the universities on the military funds brought in by contracts for "military science research."

It is inevitable, of course, that if we permit this situation to continue, the best teachers, the most principled and courageous ones will be driven from our schools . . . com-

pelled to seek refuge in other lands, as was the case under Hitler.

It is inevitable too that if this madness persists the school authorities will demand that students sign "loyalty oaths." The lofty regents will take to deciding which of our children are "fit" to attend their pasteurized institutions. Or, they might compromise on special benches for the "untouchables."

The fact that the cold war has hit our classrooms—and the minds of our children—is a crime so far reaching that it is almost impossible to comprehend it. But what is more frightening is the equally obvious fact that there is almost no protest from anyone—from our civic and cultural leaders, or the parents!

[fol. 273]

Raphael Sanzberg
We Are Not Alone *June 23, 1950*

Every medium of communication today is a weapon directed against the people of America by the cold warriors. All the newspapers, magazines, books, movies, radio stations and public speakers (with rare exceptions) are so loaded with hysteria and fear, with lies and threats of war, that we are almost overwhelmed with a sense of doom. We begin to feel American reaction is so powerful that it is almost futile to struggle against it. Which is just what the hi-partisans want.

As an antidote to these poisons we should take stock of the people's strength and their will-to-live. It will do us good to take an inventory of the forces for peace throughout the world. We will then find that we in the USA are not alone in the battle for security and sanity, that the best people in the world are on our side. We will find that it is not the power of fa-cism which is invincible, but the power of the people—which Hitler found out.

1. To begin with, there are the people in the nations irrevocably committed to peace: the 185 millions in the Soviet Union, the 400 millions in China, the millions more in Vietnam and all of Southeast Asia.

2. Then there are the stirring millions in the great African continent, the millions in Italy who are fighting for land reform, and the people of the new state of Israel who will serve as a beacon for all the Near East.

3. Humanity is fighting back in many ways. The International Red Cross has called for a banning of atomic weapons. At Blaine, Washington, the youth of the USA and Canada recently set up a peace arch, and pledged their energies to wage peace. Thirty thousand peace committees are at work in Italy, and many more in France. In East Germany over half a million youth staged a mighty peace demonstration (which our provocateurs maligned). In Cuba last month a broad popular coalition was victorious in Havana and other municipal elections.

ACTION ON ALL FRONTS

4. In our own land the burgeoning peace forces are arousing the people, in all sections of our society from the right to the left, from the non-political Quakers (whose peace proposals have had a profound effect) to the Communists (whose fight for the basic rights of all Americans is a force for peace). Three weeks ago at the Mid-Century Peace Conference in Chicago 650 delegates from 33 states, Alaska and Hawaii, made this the broadest grass-roots union of peace forces in a decade.

5. The National Labor Peace Conferences have done effective work, and counteract those who are selling out organized labor. This is true too of the National Conference of Negro Trade Unionists, just concluded in Chicago. A Farmer-Labor Alliance, described as the broadest in history, has been formed in Idaho for the 1950 elections. The Methodist, Lutheran, Unitarian and other church bodies have taken courageous stands for negotiations with the Soviet Union. The wonderful Minute-Women For Peace are expressing the demands of our mothers.

6. The trade unions—such as the ILWU—who refuse to be intimidated lend great strength to our side. So does the Progressive Party, which has already slowed down the timetable of the war-mongers. The ceaseless struggles of the Negro people for liberation make them the single most-powerful factor in America for peace. The function of such purposeful minority group organizations as the International Workers Order and the American-Mexican National Association makes them potent allies for democracy. This is true also of the new Union of Progressive Veterans.

7. The world's greatest minds are on our side: Albert

Einstein, Thomas Mann, Nobel Prize winner Niels Bohr, Harvard astronomer Howard Slapely, England's great physicists Hackett and Bernal, France's genius Joliot Curie, George Bernard Shaw, Charles Chaplin, Henry Wallace, Dr. W. E. B. DuBois, Paul Robeson, Marion Anderson, Pablo Picasso, Pablo Casals, the Dean of Canterbury—and many more! Whom have the fascists got to match these?

8. The world's response to the peace crusade of Trygve Lie, the United Nations' executive, is surely indicative of mankind's determination to resist annihilation in any third world war. (And yet, when Lie urged Harry Truman to send our Secretary of State to a special meeting of the United Nations Security Council this summer, which he said was necessary to keep the UN from collapsing, our President—according to Drew Pearson—"said he could do no such thing; that it would be a cruel hoax to play on the American people when there is absolutely no chance of agreement with Russia.")

9. Perversely, the inhumanity, crudity and duplicity of the cold warriors is a factor for peace: many people everywhere are being revolted by them—and educated.

[fol. 274] GLOBAL PEACE CONGRESSES

10. The mighty peace congresses in Paris, Wroclaw, Moscow, Peking, Mexico, and New York City, are all dramatic proof that the people are on the move and will not meekly accept the dictat of the international cannibals. The most recent congresses in Australia, Canada and Pakistan show again that the people are mobilizing everywhere.

11. The World Congress of the Partisans of Peace just concluded in Stockholm is, in a sense, the most significant of all, a culmination. Delegates from 52 countries participated. Here was adopted the electric peace pledge which has set in motion the forces which can definitely turn the tide for peace:

We demand the unconditional prohibition of the atomic weapon as an instrument of aggression and mass extermination of people, and the establishment of strict international control over the fulfillment of this decision.

We will regard as a war criminal that government which first uses the atomic weapon against any country.

12. The response to this pledge has aroused the world. The campaign for signatures, which is to be concluded by United Nations Day on October 24th, has already secured 12 million signers in MacArthur's Japan, seven million have signed in Hungary (in a total population of nine million), one million pledges in Brazil, a goal of a million set in Argentina—and many millions more are signing in the USSR, Algeria, Bombay, Israel, everywhere! The Associated Press reports that "Western observers" are saying the petition "has dangerous potentialities, and at present there is no good counter propaganda to meet it" (None except the realization of peace!)

In the USA the Peace Information Center, under the chairmanship of the eminent Dr. DuBois, has set a goal for five million signatures—500,000 to come from California. Boston has launched a campaign for 100,000 and in Brooklyn 18,000 names were signed in one week-end. Already peace organizations are active in 50 of our cities. (The Progressive Party has urged its members to go all out in this campaign. Why don't the Democrats and Republicans do likewise—or has it become unAmerican to speak for Peace?)

Our inventory (incomplete as it is) shows then, that the forces of peace are strong, that the people are fighting back, with increasing success daily. But there is no room for complacency. Now more than ever we must intensify our efforts to make the peace potential pay off.

As the authoritative observer Johannes Steel asserts: "It is the American tragedy that the motive power behind current American foreign policy in Europe as well as Asia and in Latin America does not admit of any alternative to the cold war. The United States wants to win it, not end it."

Particularly in the face of the great strength of the peace forces on our side, we Americans dare not allow our government to persist in its refusal to make peace. Or our crime will be the greater if a third war comes, greater even

than the guilt of the German people who did not stop the Nazis. History will never forgive us.

From this recognition of the strength of the people we draw inspiration and ammunition. We must go on fighting in the spirit of the Americans at Valley Forge—in the spirit of Vito Marcantonio, who recently declared: "Midnight has ended for the common people of the world. There are dark days ahead, but we will triumph. There may be some dispute as to whom the first half of the twentieth century belonged, but the second half belongs to us!"

[Vol. 275] **Meaning of The Primary Election**
by Raphael Königsberg

The highlights of the June 6th primary election were: (1) the large number of congressional and assembly races which were decided in the primaries; (2) Warren's winning over 1 million more votes than Roosevelt; (3) Douglas winning the U. S. Senate nomination; (4) Tenney's victory; and (5) Bernadette Doyle's remarkable race for State Sup't. of Education.

There are ten congressional districts in L. A. County: In five of them the incumbents won reelection. There will be contests in the other five. But, with one exception, it won't make much difference, for the people will not have any real choice. What, for example, is the difference between a York and a Hardy, as in the 14th C.D.

Only in the 20th district, where the reactionary Henshaw will be opposed by the fighting progressive William Esterman will the voters have a true choice. This may be the case in the 13th C.D. also if the IPP exercises its privilege of naming a candidate in the finals.

What cross-filing does to the people's electoral freedom is even more glaringly revealed in the assembly results. There are 32 assembly districts in L. A. County. In 21 of them the elections were decided in the primaries. There will be contests in only 11 districts.

In but five of these will citizens be able to vote for candidates who represent their interests: L. H. Spears, the IPP candidate in the 47th A. D.; George Cowell in the 59th A. D.;

and in the 56th, 60th and 67th A. D.'s—where the IPP can name candidates.

The perversion of the ballot, brought about by cross-filing, is pointedly illustrated in these results—as in the gubernatorial and senatorial races also. Cross-filing, in effect, disenfranchises many of California's voters.

Bi-partisan Bankruptcy

The June 6 results show not only why cross-filing must be eliminated, but, even more important, they expose the bi-partisan bankruptcy and corruption which convinced the people of the need for a third party, (really a second party.) Progressives have repeatedly charged that there is no longer any essential difference between the Republicans and Democrats—and certainly election results as well as pre-election maneuvers proved this to the hilt.

The contrast between the overwhelming Democratic registration in California and the consistent Republican victories, is not so puzzling as it may seem. The voters simply failed to see any important differences between the two "major" parties, and those who want reactionary candidates apparently prefer them 'straight.' The Democratic Party, having destroyed every decent principle FDR tried to instill in it—is a deliberate accomplice in this deception, this crime, against the people.

The election results are further proof of the degeneracy of the Democrats, who quite openly preferred to hand the elections to the Republicans on a silver (or golden) platter rather than accept the support of progressive forces to help elect people's candidates. This is not California Democrats' policy alone: it is their national policy, derived from that little alderman in the big White House. Look what he did for Taft in Ohio.

The People Double-Crossed

The big partisan double-cross of the people is shockingly revealed in the 14th C.D. Here they consciously sabotaged the aspirations of the Negro people for a congressman of their own. They injected Yorty in the race after the Unity Committee, representing that community, made it unmis-

takably clear, that the time had come for the election of a Negro congressman.

Now the people are left with a choice between the unpalatable Yorty and a Hardy who is identified with the worst reactionaries in the country. Such tactics only further alienate the Negroes from the Republicans and Democrats. You just can't keep on betraying people.

The bi-partisan collaboration is exposed further in the dirty scheming which placed the political doodler Boddy in the senatorial race—with the obvious purpose of helping the Republican Nixon win. Boddy was the creature of the Lucky forces, whose spokesman (leader of the official Democrats) declared long before the elections that he preferred a Warren-Nixon ticket.

Does one need further proof of the fact that the Republicans and Democrats are even closer than Siamese twins? Then what about the failure of Lucky's Democrats to support James Roosevelt effectively? And, to top them all, what about the betrayal of all the decent people in the state and the nation, by their forcing Anderson into the race for State Senator, bringing victory to Tenney?

The Issues Confused

The bi-partisan campaign against Robert W. Kenny—who in the best sense of the American tradition represented the interests of the people against those of their enemies—portrayed in one picture the major evils infecting our political life today.

A clear-cut fight between Kenny and Tenney would have given the voters an opportunity to make a clean choice between the arch representative of American fascism and the American democrat. But this the misleaders of the people could not afford. So they shoved the liberal Anderson into the race to confuse the issues. (For allowing himself to be used in this way Anderson has much to answer.) The Democrats knew they would split the Democratic vote and enable Tenney to win.

This campaign too revealed the evil of cross-filing—and that third major affliction, the disunity of organized labor. The CIO and AFL (bi-partisans also) are tied so closely to the cold warriors that they would not even campaign against

Taft-Hartley congressmen. They went along with all the tricks that helped their enemies Warren and Nixon and Tenney. Even the progressive unionists did little for Kenny.

The Voters Alerted

A major share of the work for Kenny was done by the Independent Progressive Party—which thus again showed the integrity of its program and membership. Although its members could not vote for Kenny in the primaries, the IPP strove valiantly to arouse the citizenry to an awareness of the basic issues in the campaign.

This contrasts sharply with the studied efforts of the bipartisans to avoid the issues like a plague. A grave error in the Roosevelt and Douglas campaigns was their refusal or inability to courageously discuss the major needs of the people—jobs, peace, civil liberties, etc. Roosevelt and Douglas ducked the issues, went along with their opponents' tactics to hide them, instead of forcing their foes to come out in the open on these issues.

What Roosevelt and Douglas might have achieved if they had forced such a fight is strikingly illuminated in the achievement of Bernadette Doyle—who refused to duck any issue, spoke militantly for the people's rights and hopes, and won over 414,000 votes in the state, an all-time record for an avowed Communist. (In L.A. County alone Doyle was given over 268,000 votes, 114,000 more than Kenny.) [fol. 276] It is amusing that in their desperate efforts to obscure the significance of Bernadette Doyle's great vote—and the remarkable showings of Henry Steinberg for County Assessor (58,654 votes) and Walter Martin for Sheriff (40,168 votes)—the prostitute press assumes that these voters were "ignorant." But when these same voters choose reactionary candidates then they are "sound Americans."

Lessons Learned

Analysis of the June 6 primary results points up the following important lessons:

1) The Democrat in California cannot hope to win victories without the support of the progressive forces. The progressives may not be strong enough to win on their own.

but they are strong enough to ensure the defeat of a Democratic candidate by refusing to support him.

2) Roosevelt and Douglas have a chance of winning in the finals only if they fight boldly, without compromise, for the needs of the people—and only if they encourage to the utmost the support of all progressives.

3) The rank and file of organized labor must repudiate the treacherous leadership of their officers and politicians who have sold them out to the enemies of all working people. Union men and women must again take their places in the ranks of those fighting for jobs and peace.

4) The progressive citizens of California—particularly those in the IPP—must carry on an even more intensive fight for the final elections than they did in the primaries. They must mobilize the people to:

(a) Keep the IPP on the ballot and further their party's program;

(b) Unite more Negroes, Mexican-Americans and trade unionists with them in the IPP;

(c) Create the political climate which will persuade the Roosevelts and Douglases to make fighting campaigns—which they will not do if left alone; and

(d) Bring an awareness of the vital issues of the day to all the people to help defeat the leading exponents of fascism, to safeguard American democracy.

[fol. 277]

Raphael Hongikong
Vote for Your Life *June 5/1960*

Thinking for one's self is not a skill developed in most of us by our schools or encouraged by our society. The task, therefore, of helping ourselves and our neighbors think through the basic issues of world peace and war is quite difficult.

During the war, for example, perhaps the hardest of all assignments given the army political education staff was that of convincing our troops that what we had sacrificed and achieved on the bloody battlefields was not enough—that we had finished only half the job—and that when we returned home we would have to protect our investment in democracy by continuing the same fight as citizens.

What made this assignment especially arduous was the

undeniable fact that too many Americans have almost no conception of the citizen's role in a democratic state.

Most of us live through our allotted years grasping for all the privileges that are ours (or have been) through the accident of American citizenship. But we are not conditioned to any acceptance of the fact that a price must be paid for these privileges. At least, our daily behavior shows little awareness of such a responsibility.

Is it not true that there are few among us who display a real sense of identification with our government? The vast majority of us have been divorced from any feeling of oneness with our state or federal government. We take little of the responsibility for what the government does in our name.

When we think about it at all, we usually think of the government as something apart from and almost alien to ourselves. Many look upon it as "something" which at all costs must be kept from interfering with their personal affairs. To that frightening degree have the rulers of America alienated many Americans from their birthright. To that degree have we been made our own worst enemies.

The depths to which this political perversion has gone can be illustrated in many ways—but in few so shocking as this incident, which occurred in Germany just two days after V-E Day.

One of our army discussion sessions was considering the relationship between a good citizen and his good government (one which was concerned with the welfare of all citizens), when the discussion leader asked:

"When you have seen a need in your community, like a new playground—or a problem, like civic corruption—have you and your friends tried to do anything about it, have you tried to help your government meet the issue?"

Exclaimed one sergeant, "Do! Why should I have done anything for my government? What did my government ever do for me?"

When the discussion which followed attempted to demonstrate that we, the people are the government, that in helping our government we were helping ourselves, that we

were doing exactly this as soldiers and would continue doing so as citizens by voting intelligently, this 35-year-old sergeant shouted:

"Vote, hell! I never voted. I don't believe in voting!"

At that the discussion leader exclaimed furiously, "That's treason to everything we and our allies have been fighting for! Millions of people have given their lives for that very right to vote, for a voice in controlling their destiny—and here you are, an American citizen, shamelessly throwing that great prize away!"

"Aw, my vote wouldn't count anyway," he countered.

"He's right, you know," said another soldier, "the individual's vote doesn't count for much when crooked political machines and big business control things as they do. So why should he vote?"

It is clear that those who are responsible for this civic cynicism, the unprincipled politicians and the financial interests whose tools they are, are the real subversive elements in our nation. For they are guilty of destroying the faith of many Americans in the democratic processes upon which our fate depends.

Reaction's success, however, has begun to boomerang. There is a clean, invigorating wind blowing across our land today, a resurgent faith in an aroused citizenry's power. There is a growing confidence in our strength, in the potency of the ballot.

This is evidenced not only in the work of the Progressive Party throughout the nation, but also in the organization of countless workers for peace, in the citizens fighting the Mundt-Nixon bills, in the decent people mobilizing behind Hollywood's ten brave artists.

There is hope in America, and in the world—for all these movements dramatize the growing recognition of the very great power we the people possess in our right to vote. We are learning that our votes can decide whether we and our children will have life, or death.

Raphael Rosenberg

[fol. 278]

THE ONLY WAY TO LIVE

Many is the time that we who are active in the progressive movement have this "charge" hurled at us: "You say you're fighting for the welfare of all people . . . yet you're so busy fighting for others you neglect your own family."

Some who offer this criticism imply that we are hypocrites, since surely, in accord with the philosophy of free enterprise, we should be fighting only for "our own, first and last, and to hell with the other guy." Others protest too much methinks, feeling guilty about their failure to join in the common struggle. Still others are sincere; they deserve an answer.

We active citizens, who devote much of our energies and time to fighting for FEPC, civil rights, economic security, world peace—we love our families as much as any parents, and more than most. That is why we are so active.

We too want to protect our families and insure their material well-being. But we have learned that as long as there is one child who doesn't have security, our own children cannot be safe. It simply is impossible for any one set of parents, by their own efforts, to guarantee their children's life and future—as long as there are parents anywhere whom prejudice and greed prevent from providing a decent standard of living for their families.

We are selfish. We believe that the best way to help our families is to help all families. We love life, our own and those we have created. Cherishing life as we do, we want all human beings to enjoy it to the fullest. Till they do, we can't. We want to safeguard all life.

That is why, for one thing, we joined the democratic armies to fight fascism's forces, which represent death. When we went off to war we weren't accused of neglecting our families. We think we are still in the same fight—that American fascism is as much a danger to our families and country as Nazism.

To be politically inactive now would not be a mark of devotion to our families, but a betrayal of them. Just as any citizen's failure to share in preserving the victory won in the last war is a betrayal of the nation and those who died for it. Poor citizens cannot be good parents.

It isn't that we progressives prefer to be busy with picket-

ing and precinct work. We would very much enjoy spending all our leisure with our families—and we want more leisure to do so. But how can you really enjoy yourself when you know that other families are being prevented from living normal lives? When Negro-family life is being destroyed by oppression and lynching? When others are being destroyed by immigration hounds and witch hunters? We progressives are fighting because we know if we don't stop reaction now there will be no families for us to love and enjoy. Think of how many families fascism and its crime-materia consumed!

When there is vital work to be done, a mission in which everyone is needed and each person can make a contribution, how can you refuse to do your part? In a real sense, to do so is to deny the best in you. Such inaction always corrupts.

Certainly this means major sacrifices. We understand, for example, the detrimental effects on our relations with our children deprived of the full attention of their parents. But, think of the Spanish republican parents, the French and Soviet and Chinese partisan parents, who were totally separated from their children for years—and whose fight was our fight.

Dare American parents suggest that they are not capable of equal efforts for their children's future? Dare we even imply that we deserve or want to buy it wholesale?

Of course many of us will not live to enjoy the rewards of our sacrifices. But that's not the main point. Others will, our children among them. We must think in long-range terms, in terms of our nation's destiny. We must have a sense of history.

Then too, there is the matter of one's conscience and convictions. If you believe, as all decent and just people do, that exploitation of man by man must cease, that the world and its riches belong to those who create them, then you must act accordingly. Failure to do so also corrupts.

[fol. 279] When we enlisted in the war against fascism, we did not stipulate that we were interested in crushing the German and Japanese brands only. We know that fascism has not been destroyed. We know that we are still at war, the same war, fighting now with ballots instead of bullets.

The surest chance of staying alive today is to fight. To be.

silent, to be "neutral" is to court death. Because the time soon comes when fascists don't like or need neutrals. When they are ready they will force you to become an active collaborator, or kill you. Since you must fight, and perhaps die, better fight while you have the initiative and the chance to choose the side on which you fight. There is no other way to live today.

[fol. 280] The Evil of Self-Righteousness May 4, 1950

Since human beings first associated themselves in various endeavors it has been realized that no human being or institution is perfect, that no person or organization can "always be right." And yet, it is not surprising, there have been persons and nations from the very first who not only were certain they were always infallible and superior, but insisted that others accept them at their face value.

Such persons, it is well known, frequently land in insane asylums—chanting incessantly that they, and only they, are the genuine "Napoleon!" Nations given to such delusions cannot be locked up (though Roosevelt proposed quarantining them) and so have brought indescribable degeneracy, agony and tragedy to mankind. Witness Nazi Germany.

As we read daily of the exploits of Truman and his bi-partisan associates, we are compelled to ask whether they—and the publishers of the papers which extol them—are not gravely afflicted with the disease of self-righteousness. Let us examine some of the symptoms:

(1) News from Washington these past years has repeatedly told of "Project X," the super-central intelligence agency which our government has been building. It has been officially announced that one of its major purposes is to encourage counter-revolutionary activities wherever there exists a government our rulers don't like, as in eastern Europe. Simply put, this means that your taxes and mine are spent to buy spies in those countries, to bribe natives to turn traitors against their own governments, for the purpose of overthrowing those governments. And yet, when some of these spies are caught, as happened in Hungary, Washington raises its hands in hypocritical

horror, hysterically denying that the ultra-righteous State Department could be involved in such dirty work.

(2) Recently an American plane, fully equipped with radar and other essential navigational devices, was found over Soviet territory, 400 miles off its course. This could not be an accident. It was clearly a serious violation of international agreements. And yet—it is our government which has striven mightily to turn this incident into a "Soviet attack" against the U.S.A.! And our spokesmen in Congress have indulged in what is probably a new low in criminal irresponsibility, in effect calling for war!

(3) In the perverted language of the bi-partisans it is the Soviet Union which alone is responsible for the weakening of the United Nations. Always, they say, it is the USSR which undermines the UN—never the unilateral actions of the U.S.A.; our building of the bloc of North Atlantic Pact countries, our joining in the civil war in Greece (on the side of fascism), our fantastic support of Chiang Kai-shek, our Marshall Plan designed to destroy democratic people's movements wherever they are growing.

(4) According to Wall Street and its mouthpieces in the State and War Departments (oops, I meant Defense Dept.), it is the Soviet Union which pushed us into the cold war and is keeping us there; it is "Red imperialism" which is forcing us to arm the world's fascists and ourselves to defend the embattled democracies of the earth. ("Soviet imperialism"—why even an elementary understanding of the structure and philosophy of the USSR, which we have a right to expect of our officials, would demonstrate that this is a basic contradiction in terms.)

They call the Soviet Union imperialist—when it is, our government which has more bases and soldiers all over the globe than ever before; more oceans under its control, when it is our government which via "Point Four" plans to exploit the colonial areas of the world for the benefit of Wall Street, when it is our government which via the European Recovery (!) Program is attempting to dominate the economies of the countries which seek our help. Imperialism indeed!

Instead of being careful students of philosophy of the

Soviet Union—our wartime ally—it appears that our “leaders” learned more from Hitler—especially his use of the “Big Lie” technique. Say evil is good and falsehood is truth, say it often and loud enough, and the people will believe it! Along with this goes a colossal contempt for the people, for our intelligence and our hopes.

Here truly are falsehood and hypocrisy raised to the level of national policy! Here truly is the mark of the beast, mark of the fascist!

It is the mark of fascism—this disease of self-righteousness—for it leads inevitably to a soaring sense of superiority over all other people: (It is conceivable that the U.S.A. is always right and other nations always wrong?) If we are always right and others always wrong—then we are superior and they are inferior. Surely this is a philosophy and a national policy no minorities among us can approve, or be party to.

The bullying, self-righteous posturing of our spokesmen are by no means evidences of strength. No—basically they are signs of a profound sense of guilt, and a terrible fear, born of the realization of great weakness and approaching doom. It is an incurable disease they have, these mad dogs—a symptom of the decay of their “American way of life,” evidence that it has outlived its usefulness and that the people of our great land must make it over into a way of life which will insure truth and justice and security for us all.

[fol. 281]

THE ANNIVERSARY

Five years ago, August 15, 1945, the greatest, bloodiest war in history ended with the surrender of his country's forces by Hirohito—predecessor of the present emperor of Japan. The victory of the allied free peoples of the world demonstrated beyond all doubt their superiority over the fascists.

Every allied man and woman who participated in that war made history—as surely as did, for example, the freedom-loving people who achieved the French, American and Russian revolutions. The allies gave mankind another chance to build the better world the best of men and women have dreamed of for ages. We proved once again that his-

story is not made exclusively by the high born, the rich, and the generals (as the textbooks say)—that the people make history.

We paid a terrible price for victory: 22,000,000 men, women and children were killed during World War II—of whom 326,000 were slain American soldiers; 670,000 American soldiers were wounded. The value of the homes and buildings and land destroyed and the billions of tons of material expended can only be guessed at—but undoubtedly enough to give homes and schools and hospitals, and much more, to all the people who need them.

And it is important to recall why we and our allies fought such a costly war. The U. S. War Department, in its political education program for our troops, stated officially that we were fighting to defeat fascism, which it described as:

"Fascism is the precise opposite of democracy . . . Fascism is government by the few and for the few . . . Fascism came to power in Germany, Italy and Japan; . . . supported in secret by powerful financial and military interests . . . fascists solved unemployment by converting their nations into giant war machines . . . Those who subsidized and ran fascism grew richer . . . People of a fascist state earn less and less . . ."

"Any fascist attempt to gain power in America . . . would work under the guise of 'super-patriotism' and 'super-Americanism' . . . Indiscriminate pinning of the label 'Red' on people and proposals which one opposes is . . . a favorite trick of native as well as foreign fascists. . . ."

I know this was the official American definition of fascism and the enemy because for over three years as an army orientation officer I was ordered to indoctrinate our troops with that definition. I believed it to be true then. I believe it to be equally true now—and confirmed by what has been happening in my own country since the war ended.

The U. S. Army trained me well to recognize the symptoms of fascism. I am able to assert therefore that every part of that official definition describes accurately what native fascists are trying to do in America today.

WE FOUGHT WELL.

Consequently, this poses a question of great significance—one which every thinking American must answer for himself: If the USA was right in paying so high a price to defeat fascism, can our government be right five years later in its actions which follow so closely its own definition of a fascist state?

If what we did five years ago to destroy the fascist states was right, what our government is doing now must be wrong. We can't possibly be right in both situations which are "precisely opposite" to each other. If what our government is doing today is right, then in helping to stop the fascists five years ago we paid an awful price to commit the greatest mistake in history.

[Vol. 282] There are certain infamous Americans who insist that we were wrong to join the allied cause in World War II. But do the American people think so? To do so means to say that every American and allied soldier and civilian who died in the war died for a lie, that all the sacrifice the rest of us made on the battlefields and home fronts were for an evil cause.

Dare the Trumans-Dulles-Warrens tell our gold star mothers that their sons gave their lives for naught? That they dare not—for they know that that is the lie. They know the American people would reject such a betrayal, would drive such betrayers from public life.

We know we were right in fighting the fascists five years ago. We know that in beating them we gave democracy another chance. This is the great victory of that war, which makes our sacrifice worthwhile. We learned that safe-guarding democracy, our children's future, is a life time job—and that we have the strength and wisdom to do it. We learned that we must fight fascism all the time, everywhere.

After our victory we had every right to expect the building of the better world we'd fought for. By our deeds, we the people earned that reward and proved ourselves worthy of it. We proved also that we are capable of creating it ourselves.

We have great pride in that victory—a pride that fortifies

us, that confirms our invincible power, a pride that is a source of profound satisfaction and a rich heritage for our children, a pride that will generate the determination to build a better life.

On this fifth anniversary of the world war's end, therefore, we pledge that we will take our victory back from the misleaders, from the traitors who sold us and our nation short.

[fol. 283] **THE GANGSTERS, INCORPORATED**

As a citizen and taxpayer I want to suggest to our law enforcement authorities that they are spending too much of their time and our money on the small fry. They should be using the power and resources we have entrusted to them to apprehend and imprison those who are the greater menace to the peace of our communities.

This does not mean that the Dillingers and Capones should be allowed to operate freely. But it does mean that our authorities must develop a sense of proportion, of relative values. We must help them learn to spend more of their time doing those things which help the people most—such as putting out of action those criminals who are the greater threat to our safety, who are really disturbing the peace.

After all, is there any comparison between the sums stolen by the James and Dalton Boys, for example, and the billions which have been stolen from the American people by the Congressional gang which gave them to Chiang-Kai Shek? Or between the victims of all the murders in U. S. history and the numbers of our soldiers killed in foreign lands for the profit and power of the gangs who've controlled our government?

Measure all the blood and tears, all the broken homes and ruined lives, even the property losses, which have been caused by the crimes listed in our police records—and it is a cinch bet that they will not equal even a percentage of a fraction of the destruction of cities, lives and dreams caused by the criminals in public and corporation offices who have:

- ~~Denied~~ innocent people because of their skin color.
- Denied our wives and children even half of the glorified "American standard of living."

- Exploited working men and women and children at low wages,
- Turned troops on strikers,
- Prejudiced neighbor against neighbor because of color or creed,
- Refused adequate housing for American families,
- Stolen our civil rights and jailed us for protesting,
- Made war to save their profits and political power.

Was there ever a robber chieftain who urged the cold-blooded slaughter of millions of people—as do the American leaders who want to drop atom bombs over the world? Was there ever one so hypocritical as our cultured Secretary of State who said that any American favoring outlawing the atom bomb was a Communist? Was there ever one so amoral as our Secretary of Navy who recommended that the United States be willing “to pay any price, even the instituting of a war, to compel cooperation for peace.”

No Comparison

Not all the criminal gangs in American history put together were as great a danger to our country's welfare as are the generals who today urge that American youth be trained as “killers.” No thieves were ever so corrupt as the Hoovers and Harrimans who say that to preserve the “American way of life” we must choose guns instead of butter—who spend millions in poison gases and not a dollar for a cancer cure.

None of the murders have been so sinful as a Dulles who uses religion to champion the anti-Christ. None such a threat to our security as a U. S. Attorney General who denies us the right to bail and tells brother to spy on brother.

The preoccupation of our law enforcement officials (and the press; radio and movies) with the lesser crimes of the admitted gangsters—while they ignore and hide the greater crimes—is, of course, no accident. For one thing, by filling the newspaper and the air with stories of the petty criminals, they hope to keep our attention diverted from the plots and doings of the bigger criminals. For another,

public officials, civic leaders, and press and movie owners have been known to be in league with the organized criminals:

The Dillingers and Capones—while rarely Robin Hoods—at least have not claimed to be anything but what they were: men trying to make their pile under the rule of "I'll get mine and to hell with the other guy"—which rules our country. They got theirs, perhaps a little more crudely than various corporation executives and politicians—but never at such a cost to society. Never did they pose as the moral leaders and rightful rulers of our land. They weren't hypocrites.

[fol. 284] As we compare the deeds and motivations of the crooks and catthroats with the crimes of the powerful men who have ruled our land, who consider themselves the respectable leaders of our society, are we not forced to ask—realizing that both groups are creatures of a degenerate society: Who are the greater menace to our community?

[fol. 285]

COMMITTEE'S EXHIBIT No. 2

Testimony of Raphael Koenigsberg before the Senate Fact-Finding Committee on Un-American Activities, California, 112 State Building, Los Angeles, on Tuesday, September 7, 1948.

RAHAEL KOENIGSBERG, called as a witness on behalf of the Committee, having been first duly sworn, testified as follows:

Chairman Tenney: .

Q. Will you state your full name, Mr. Konigsberg?

A. Raphael Koenigsberg.

Q. Where do you reside?

A. 2446 Echo Park Avenue.

Q. What is your occupation?

A. Social worker.

Q. Are you presently employed?

A. Yes, I am.

Q. Where?

A. The Los Angeles Sanitarium.

Q. Is that a public agency?

A. No; it is a private agency.

Q. Where is it located?

A. In Duarte, near Monrovia.

Chairman Tenney: Proceed, Mr. Combs.

The Witness: Mr. Tenney,——

Chairman Tenney: You may give it to the press.

The Witness: No; I am not referring to any statement. I just wanted to ask, since you made a statement a moment ago, a very good statement it was, about the dangers of anti-Semitism, and since you have ejected our attorney, I suggest you eject or subpoena the anti-Semite who returned to the courtroom and now sits in the back of the room. At least you can be consistent.

[fol. 286] Chairman Tenney: We certainly did that. We ejected the man who caused the disturbance this morning. We have his name and address and he may be subpoenaed at a future hearing.

The Witness: He is in the room now. If you eject our counsel, we feel he should be ejected.

Chairman Tenney: We gave your counsel about five opportunities to conduct himself as an attorney and gentleman. He refused to do so. We finally had to eject him permanently. If the gentleman you have in mind does anything to disturb us, we will eject him, also. This is a public hearing for people whether they are good Americans or Communists or anti-Semites, whatever they may be; as long as they conduct themselves, they may be able to remain, but if they can't conduct themselves, they will be ejected.

The Committee has subpoenaed many anti-Semites; many subversive leaders who head such organizations, and we have no more use for them than we have for Communists.

The Witness: We agree with the purpose of any committee's fight on subversive activities. Why, for example, hasn't the Committee interested themselves in subversive activities such as the recent murder of some Negro boy by the Los Angeles Police Department?

Chairman Tenney: We are here to question you, Mr. Konigsberg. You are not here to question us.

Will you proceed, Mr. Combs?

The Witness: You get your authority from the People of the State, do you not?

Chairman Tenney: That is right, and they have mandated us to investigate Communism, Fascism and Nazism.

Proceed, Mr. Combs.

[fol. 287] Mr. Combs: Q: How long have you resided in the State of California?

A: Since 1936.

Q: Prior to that time you resided where?

A: In Washington, D. C. May I ask this, Mr. Combs? I think we would save a lot of time, and incidentally, expense to the state in prolongation of the hearing if you permitted me to read a brief statement, which I am sure will cover the various points you have to ask.

Chairman Tenney: Mr. Koenigsberg, we will accept the copy of your statement, which will be attached to the transcript, and we will now proceed to the matter at hand.

The Witness: May I have an opportunity of reading it here during the questioning?

Chairman Tenney: No. We have denied that to every other witness. We know the routine so well, Mr. Koenigsberg.

The Witness: You mean your routine.

Chairman Tenney: No, your routine. Your audience may be fooled by it. Most of our good Americans are acquainted with the routine and the dilemma in which many of you find yourselves. We will save time and the transcript, and as you say, money, for the people of the State of California.

The Witness: That is what I am interested in. You are not afraid of what is in the statement?

Chairman Tenney: I am not afraid of what is in the statement, particularly of Communists.

Mr. Combs: I am afraid we had better go ahead with [fol. 288] the questions or we will be here all night.

The Witness: I will be very happy to cooperate, Mr. Combs.

Mr. Combs: Thank you very much. I would like to get started with that cooperation.

The Witness: All right.

(Whereupon, the statement of the witness was filed with the Committee and marked Koenigsberg Exhibit No. 1, September 7, 1948)

Mr. Combs Q.: Were you connected with the American Peace Crusade in 1940, Mr. Koenigsberg?

A. I don't recall any such organization.

Q. You don't?

A. No, sir.

Q. You never heard of the American Peace Crusade?

A. I may have heard of it, but I don't recall. What is the point or purpose of such question?

Q. Were you living in the 44th Assembly District at that time in 1940?

A. What street would that be? I don't remember the Assembly District.

Q. 960 Everett Street?

A. Yes, I lived at that address at one time.

Q. And you lived there in 1940, did you not?

A. I don't recall the exact year, but shortly before going into the Army.

Q. You never heard of the American Peace Crusade?

A. I don't recall any such organization. Perhaps it had some other name. No, I don't at that time—American Peace or American Mobilization—No, I don't recall such name.

[fol. 289] Q. There was the American Peace Mobilization, but I am not referring to that.

A. I don't recall any such organization, Mr. Combs.

Q. Did you ever hear of the Hollywood Independent Citizens Committee of the Arts, Sciences and Professions?

A. Yes, I have heard of it. Anyone that reads the newspapers has heard of it.

Q. You never heard of the American Peace Crusade, and a lot of people who can read newspapers have heard of that.

A. The Hollywood Independent Citizens Committee of the Arts, Sciences and Professions is a very recent organization.

Q. The other one is a 1940 organization.

A. May I say at this point by what authority actually do you ask such questions as to my association or affiliation with any organization, which, if I understand anything, and

Used to teach English, by the way, the American Constitution denies you the right to question my organizational affiliations.

Q. We ask you the questions by authority of a Senate resolution by which this Committee functions.

A. And the Senate authorized this Committee to act in a manner to subvert the Constitution of the United States?

Q. Are you going to answer the question, Mr. Koenigberg?

A. I am answering the question.

Q. Or are you going to get into a debate? I am not being interrogated here, but you are, and you are most uncooperative. No, let's get back to the question again, and you can answer or not, as you please.

[fol. 290] Were you a member of the Board of Directors of the Independent Citizens' Committee of the Arts, Sciences and Professions?

A. I challenge your right to ask the question, but since it is a matter of record, I never was a member of the Hollywood Independent Citizens Committee.

Q. Did you attend its conference on Thought Control on July 9, 10, 11, 12, 13, 1947?

A. Again protesting in the same manner, I did not attend it.

Q. All right. Did you ever participate in the activities of the California Legislative Conference?

A. What is the purpose of that question?

Q. I have my own purpose, and I don't have to disclose it to you, and I don't think I shall.

A. Thank you.

Q. Answer the Question.

A. Mr. Combs, if you are asking me a question, I think you have the obligation of telling the reason.

Q. The California Legislative Conference has been found to be a Communist-dominated organization.

A. By whose definition?

Q. By our definition.

A. Do you expect us to accept that definition?

Q. I don't care whether you do or not.

A. It is a matter of public record I participated in the Legislative Conference, and I gave a report there.

Q. Thank you very much. Did you ever hear of an organization called the Congress of American Women?

A. Certainly.

[fol. 291] Q. Did you have anything to do with them?

A. Not to my knowledge. It was a very fine organization. I was never asked to participate in it.

Q. Did you ever speak before it?

A. Not to my knowledge.

Q. Are you sure of that?

A. Well, I am sure—the Congress of American Women?

Q. Yes.

A. I don't recall ever speaking to that organization.

Q. Were you backed in your candidacy for member of the Los Angeles Board of Education by that organization, or do you know?

A. I don't know. I would assume that they might have supported the Citizens Committee for Better Education in its program, and as you know, I was a candidate sponsored by the Citizens Committee for Better Education.

Q. According to the People's World of March 12, 1947, column 1, page 7, they were very active in your behalf in that campaign.

A. Fine. That proves they were for democracy.

Q. They are also in Tom Clark's list as a Communist organization. Did you ever hear of the People's Educational Center?

A. Yes, sir.

Q. Were you ever a lecturer there?

A. I was very proud to be a lecturer there.

Q. When did you lecture there?

A. I don't recall the exact date.

Q. Was it in the fall of 1947?

[fol. 292] A. It may have been.

Q. How long ago?

A. It was sometime in the past year.

Q. What did you lecture about?

A. I lectured about my observations in Germany and what the Fascists did in Germany and what they are trying to do in the United States.

Q. Were you paid for your work?

A. Not at all.

Q. How did you happen to become a lecturer there?

A. I was invited to.

Q. By whom?

A. The director of the school.

Q. What was his name?

A. Sidney Davidson. It is a matter of public record.

Q. Did you know that Sidney Davidson has been found to have registered as a member of the Communist Party.

A. Whether I knew it or not is a matter that this Committee has no authority to inquire into, but it wouldn't have made any difference if I had known it.

Q. You are a member of the Advisory Committee of the Los Angeles Division of the California Labor School, are you not?

A. Yes, I am.

Q. To keep the record straight, I don't think it has been specifically stated, the headquarters for that school is at 112 West Ninth Street, Room 812, isn't it?

[fol. 23] A. That is a matter of public record; it is. Wait a minute; did you say West Eighth?

Q. West Ninth, Room 812.

A. West Ninth; that is right.

Q. When were you last there, Mr. Koenigsberg?

A. Within the past week.

Q. For what purpose?

A. A meeting of the Advisory Board of the School.

Q. Did you attend the meeting that preceded it?

A. I did, since it has been made a matter of public record, and I question your right to ask what meetings I have attended.

Q. You can question the right, but I am interested only in your answers to the questions.

How did you happen to become a member of the Advisory Committee?

A. I was invited to serve as a member of the Advisory Committee.

Q. By whom?

A. By Mr. Hedley, the Director of the School.

Mr. Combs: That is all.

Chairman Tenney: Q. Have you ever been or are you now a member of the Communist Party?

A. Mr. Tenney, I think the nature of my answer should be clear. I deny that this Committee has a right to question any American citizen as to his political affiliations. The purpose of such question is to subvert the liberties of our American citizenry, and as soon as we realize that is the function of such committees to serve, I think it is the best thing we can do to serve democracy.

Q. I now direct you to answer the question: Are you now [fol. 294] or have you ever been a member of the Communist Party?

A. I am not refusing to answer the question. I am stating the answer that any intelligent American can give, seeing what has happened today follows the pattern that happened in Germany. My answer is the citizen's right as guaranteed under the Constitution is paramount to the right of the un-American Legislative Committee to question me about affiliation. If you will read your American History books, and you claim to be somewhat of an expert on the subject, you will find, for example, in Pennsylvania, Thaddeus Stevens in 1935 tried to do the same thing with the Masons, and he was denied by the Supreme Court the right to question anyone as to whether or not he was a member of the Masons.

Q. For the third time, I direct you to answer the question which you have refused to answer so far.

A. I do not refuse. Let the record indicate that.

Q. Will you answer the question?

A. I have answered the question to the best of my ability.

Q. You raise objections for refusing to answer the question. The question is very distinct.

A. My hearing is very good, Mr. Tenney.

Q. Are you now or have you ever been a member? I now point out to you that some 30 or more individuals in the State of California, in spite of the fact that they have raised all of these points, have been convicted for contempt of this Committee.

A. That is a great tragedy in our country that these happen.

Q. Will you answer the question?

[fol. 295] A. Your purpose in asking such question—

Q. I am talking about the purpose.

A. —is to stifle all freedom.

Q. Have you been or are you now a member of the Communist Party?

A. I say this Committee has no right to ask any citizen such question.

Q. I think the record shows conclusively that the witness has refused to answer the question.

A. That is false, sir. I have not refused to answer the question.

Chairman Tenney: I think the members of the Committee agree that the witness has refused to answer the question. I think the Committee is unanimous in its conclusion that you have refused to answer the question.

Thank you very much, Mr. Koenigsberg; you are excused.

The Witness: I will answer it the only way any intelligent citizen can, to defend the principles of American democracy.

Chairman Tenney: You are excused.

The Witness: May I pass to the press my statement?

Chairman Tenney: Yes.

The Witness: May I distribute it to the audience?

Chairman Tenney: No.

The Witness: Why can't I do that?

Chairman Tenney: You are excused, Mr. Koenigsberg. The Committee will take a five-minute recess.

September 19, 1948

Sen. Jack Tenney, Chairman
 Tenney Committee
 State Building
 Los Angeles

Dear Sir,

I have just noticed two serious typographical errors in the statement I handed your Committee when I appeared before you on September 7th. To keep the record straight, please make the following corrections in your copy:

Page 1, Line 6: Insert the word "Seventh" before "U.S." (I was the orientation officer for the Seventh U.S. Army.)

Page 1, Line 10: The sixth word in this line—"war" should read "way" (... cleared the way for civilization to advance.)

Thank you.

Very truly yours,

/s/ R. Konigsberg
 Raphael Konigsberg

TENNEY COMMITTEE HEARINGS—9/7/48

2446 Echo Park Ave.
 Los Angeles

[fol. 297] Statement of
 RAPHAEL KONIGSBERG

For three and a half years I served in the American Army—in the U. S., Africa, Italy, France and Germany, as an Orientation Officer responsible for the political education of thousands of our soldiers. The objective of the Army orientation program was to give the American troops an understanding of the basic issues of the war and of the peace. In my last post, with the rank of Captain, I was the chief orientation officer for the Seventh U. S. Army in

Germany supervising the program for over 400,000 soldiers.

When I sailed from Europe for home, I was certain that after what we and our Allies had done in winning the war the world would never be the same again, that we had cleared the way for civilization to advance.

I looked forward to my country's future and my own with unbounded faith in our ability to build that better society we all needed so desperately. I was proud of America and proud that I had earned my right to American citizenship and that I could pass this heritage on to my children as a guarantee of their future.

Then I came home . . . and the America I found made me fear for the future of my children. For I returned from a war against the forces of fascism to find the preconditions of fascism's triumph being engineered in my own country! I could not believe the evidence of my senses.

Therefore, I have been studying the deeds of the rulers of our country and their representatives—of which the Tenney Committee is an example—and with deepening horror I am forced to conclude that it is you who are the real enemies of our country and world peace. You, the financial-military bi-partisan cabal, are the subversive Americans.

[fol. 298] Here is the evidence:

You defend and arm fascists, America's enemies, all over the globe and persecute defenders of democracy in America. You entrust the defense of our democratic system to men like Forrestal who helped build Nazi power.

You proclaim that the Truman-Marshall plan "is directed not against any country or doctrine, but against hunger, poverty, desperation and chaos" . . . and then you tell the people of Europe and Asia to vote and live the way you want them to or starve and die! But, when the peoples there move toward a more democratic life you accuse other nations of intervention!

You know that before the fascists can take full power in any country they must first divide and smash the labor unions and that is what you are endeavoring to do in America. You display inordinate zeal in ordering Congress to give our tax funds to the murderers of the Greek and Chinese people, but show no comparable enthusiasm in fighting for the welfare of Americans. Do you expect us

to believe that a few Communists are responsible for the program you have decreed for us: Lower living standards, weaker trade unions, less economic security, less civil liberty, more guns, the draft and another war . . . while the dead of the last war are not yet decently buried?

You deliberately manufacture the Red scare—a tested Hitlerian technique—to conceal your own treasonable failures to meet our people's needs, to divert our attention from your ultimate purpose: to oppress and enslave Americans and dominate the world. By instituting loyalty inquisitions and wit-hunts you hope to frighten and destroy those who would expose your schemes and defend democracy—which is why you have suborned us today.

[fol. 299] You sabotage the United Nations, you prostitute the honor of our nation—as in the double-cross of the Jewish State—and . . . arrogate unto yourselves the right to pass moral judgments on other nations! What contempt you feel for the intelligence of Americans.

You succor our wartime enemies, the killers of America's sons, the despoilers of civilization. And to our allies you offer starvation, fear, and death. If Hitler came to life today, could you refuse him aid? The millions cremated and slain cry out: "Is it for this we suffered and died?" Will you tell America's dead they died for a lie?

What bankruptcy of morality, of social and political and cultural values! Dishonesty! Hypocrisy! Atomic force in place of reason! Personal gain above the common welfare! Hate your fellowmen! Destroy the ten commandments! Is this the American way of life we are to teach our sons and daughters?

As a father, I accuse you of plotting a society in which I am afraid to raise my children. You are stealing from me the leisure and peace of mind to enjoy and grow with my family. You are despoiling my children's democratic heritage . . . and threatening their lives.

As a Jew, I accuse you of planning an America in which my people can find no security. You are capable of doing to us what the Nazis did.

As a veteran, I accuse you of betraying all the promises our government made to Americans when we went to war. You have squandered the glorious opportunities our war

sacrifices gave our nation to build world peace and a better America. You have undermined our pride in our country. You are diabolically creating disillusionment, despair and spiritual decay, to prepare a soil in which fascist ideas can flourish—and democracy die.

As a citizen, I accuse you of shaming my country before the liberty-loving peoples of the earth. You have made [fol. 300] America, formerly honored as the saviour of democracy, the most feared and hated nation. What a spectacle you make of us: the most powerful nation on the globe claiming to be defenseless, terrified of decency and progress and every free idea. You have corrupted our magnificent war aims and turned them into their opposites. You are undermining our faith in the democratic form of government. You are conspiring to annihilate America if need be to achieve your goals.

In discharge, therefore, of my responsibility as a citizen, I do hereby declare war without quarter on you un-Americans, the enemies of my country, my people, and democracy. I pledge my word to use every democratic means to defeat you.

I know what I risk in doing so. I know too that if we do not stop you now, there will be a war—and I will be destroyed, for no good purpose. It is far better that a man expend his life in a manner most useful to the realization of his principles.

I want to fight while I still have the chance, and while there is yet time to choose the side on which I fight. Come what may, I want to know, and I want my family and friends to know, that I did my part to keep fascism from conquering America.

I cannot fight alone. To be effective I must join my strength to that of my fellow-Americans. Together we defeated the foreign foes. Together we will defeat the conspirators within—and bring justice to America and peace to the world!

Committee's Exhibit No. 4

The Committee of Bar Examiners of the State Bar of California

2007 General Tower, San Francisco 5, — 440 Rowan Building, Los Angeles 13

REGISTRATION OF

REGISTRATION NO.

DATE FILED

FOR USE OF COMMITTEE OF BAR EXAMINERS ONLY

Registrant will be exempt from the first-year law students' examination:

- ☐ (a) Has been admitted to practice in another common-law jurisdiction.
- ☐ (b) Exempt if he satisfactorily completes the first-year course in the accredited law school in which now enrolled.
- ☐ Registrant will not be exempt from the first-year law students' examination.
- ☒ Registrant had completed at least two years of college work before commencing to study law.
- ☐ Registrant had not completed at least two years of prelegal college work, but was over 25 years of age when he commenced the study of law.

Application approved

Disapproved

I hereby apply for registration as a law student in accordance with the provisions of the Rules Regulating Admission to Practice Law in California, and submit the following information in support thereof.

The required fee of \$7.00 accompanies this application.

Address

Raphael Konigsberg
 2446 E. 4th St. - No. 4074
 Los Angeles, California

Date

December 4, 1950

INSTRUCTIONS TO THE APPLICANT

Read carefully the Rules Regulating Admission to Practice Law in California.

Fill out the following questionnaire in your own handwriting.

All statements are to be based on your own knowledge unless the statement is expressly qualified to show the source of your information.

Answer all questions and make your answers specific.

If the space for any answer is insufficient, complete your answer on a separate attached sheet.

This application for registration must be filed within three months after you begin the study of law, unless for good cause the Committee permits later registration. If more than three months have elapsed since you commenced the study of law, accompany this application with a letter requesting permission to file late and stating the reason you did not apply within the three-month period.

Section 6000 of the Business and Professions Code and the Rules Regulating Admission to Practice Law in California (both of which you are referred to for more detailed information) provide that, in order to take the bar examination, a person shall:

- (a) Be a citizen of the United States.
- (b) Be of the age of at least twenty-one years.
- (c) Be of good moral character.

RECEIVED
 DEC 11 1950

(d) Have been a bona fide resident of this State for at least three months immediately prior to the date of the examination.

(e) Before beginning the study of law, have completed at least two years (the summer or the winter term) of college work or have reached the age of 25 years. (Students who had not completed two years of college work (or reached the age of 25 years at the time of commencing the study of law may nevertheless be admitted to admission from the prelegal college department if they do not claim credit for any law study pursued before, and prove that they have entirely complied with the legal educational requirements after, entering at the age of 25 years.)

(f) Have registered with the examining committee as a law student within three months after beginning the study of law. The examining committee, upon good cause being shown, may grant a late registration.

(g) Have either:

(1) Graduated from an accredited law school receiving admission to the full state of its students for three years (or 24 months in certain instances. See Section 91 of the Rules).

(2) Graduated from an accredited law school requiring a post study of its students, then for four years (or 36 months in certain instances. See Section 91 of the Rules).

(3) Studied law diligently and in good faith for at least four years.

(h) Have filed application for and passed the four-year law student's examination in law that entitles you to exemption therefrom. To be entitled to exemption from the four-year law student's examination in criminal law:

(1) Have satisfactorily completed the four-year course of instruction in a law school approved by the committee at the time of his graduation therein or as prescribed at the time to complete the four-year course, or

(2) Have been admitted to practice law in a state or foreign jurisdiction.

The purpose of the following questionnaire is to help you and the Committee to determine whether you will be eligible to take the bar examination after you have completed your first year. It is not the purpose to decide concerning your eligibility, commencing with the review of the Committee of the Rules.

REGISTRANT'S QUESTIONNAIRE AND AFFIDAVIT

1. Personal Data:

(a) What is your full name? RAMON RODRIGUEZ

(b) Have you ever been known by any other name? No

If so, state and give details. If change of name was by order of court, file certified copy of order with this application. If married woman, give maiden name.

(c) State the full names and addresses of all employers, business concerns, and companies (including self-employment) you have had during the past five years, the dates of the employment and associations, and the positions held by you.

(Name)

(Address)

(Date)

(Position)

U.S. Army

Washington, D.C.

1942-1945

Captain

U.S. Army

San Francisco, Calif.

Jan 15 - Jan 20, 1946

Staff Sergeant

California Eagle

Los Angeles, Cal.

9-10-46 to 1-1-47

Assistant Editor

2. Citizenship. [Notice: You need not be a citizen until you apply to take the final bar examination.]

(a) Are you a citizen of the United States? Yes

(b) If so, state whether you are a citizen by birth or whether you became a citizen by naturalization.

By father's naturalization.

(c) If you became a citizen by naturalization, give date and place of naturalization, and submit original naturalization certificate, which will be returned to you.

(d) Where were you born? London

(e) If you are not a citizen of the United States, when do you expect to become a citizen? _____

3. Age:

(a) When were you born? March 24, 1891

(Month, Day, Year)

(b) State age in years and months. 39 years - 8 months

4. Moral Character and Fitness:

(a) Have you ever been summoned, arrested, taken into custody, indicted, convicted or tried for, or charged with, or pleaded guilty to, the violation of any law or ordinance or the commission of any felony or misdemeanor (include all such incidents no matter how minor the infraction or whether guilty or not. Although a conviction may have been expunged from the records by order of court it nevertheless must be disclosed in your answer to this question)? No

(Yes or No)

(b) If so, state the facts completely but concisely for each case, and give the date, name and nature of the offense, name and locality of court, and disposition of each such matter.

(b) As a member of any profession or organization, or as a holder of any office:

(1) Have you ever been suspended, discharged or otherwise disciplined? No

(Yes or No)

(2) Have you ever been reprimanded, censured or otherwise disciplined? No

(Yes or No)

(3) Have any charges or complaints, formal or informal, ever been made or filed or proceedings instituted against you? No

(Yes or No)

If so, state as to each such case, the date, the nature of the charge, the facts, disposition of the matter, and the name and address of the authority in possession of the records thereof.

May 1902 The attention coming from my having my position at the City of London led to my filing charges of improper personal conduct against another official worker. One of the friends then filed similar charges against me. There was harassment by the National Board of the American Union of Dry Goods. You can check this with Chapman, Charles, Chas. Am. Union of Dry Goods, 605 Broadway, NY.

(c) Have you ever been a party to or had or claimed an interest in any civil proceedings? No

(Yes or No)

If so, give details.

303

(c) State every address (including your present address) you have had since you were sixteen years of age commencing with the earliest.

(City and State)

(Street and Number)

From
(Mth & Yr)

To
(Mth & Yr)

Los Angeles, Cal. - 2446 Echo Park Ave. - Nov 1946 Present
 " - 1663 R. Comstock St. - Jan 1946 Nov 1946
 N. S. Army - 2 U.S. Avenue - Oct 1942 Jan 1946
 Los Angeles, Cal. - 429 W. Baylerton Ave. - Apr 1942 Oct 1942
 Mendocino, Cal. - 791 Oakdale Ave. - Jan 1941 Apr 1942
 Los Angeles, Cal. - 969 Sunset St. - " 1940 Jan 1941
 " - 7711 1/2 Norton Ave. - 1938 1940
 " - 1350 Hope St. - July 1936 1938
 Washington, D. C. - had 3 addresses - Sept 1935 June 1946
 Cleveland, Ohio - 9919 Ridgeway Ave. - 1927 1935
 (During This Time I attended Ohio State U.
 Columbus, Ohio)

6. Prelegal Education. [Requirement: Unless you were at least 25 years of age when you commenced the study of law you are required to show that you had completed at least two years (60 semester or 90 quarter units) of college work prior to commencing the study of law. Students who had not completed two years of college work nor reached the age of 25 years at the time of commencing the study of law, may nevertheless be entitled to exemption from the prelegal college requirement if they do not claim credit for any law study pursued before, and prove that they have merely complied with the legal educational requirement after, arriving at the age of 25 years.]

(a) Show how your prelegal education was obtained:

(1) Grammar School. (1) Proctor, Conn. From Apr, 1918, to Jan, 1923
 (Name and Location)

(2) Livingston High School, Ohio From Apr, 1923, to June, 1925
 (Name and Location)

Graduated? Yes
 (Yes or No)

(2) High School. (1) Shirleyville High School, Ohio From Apr, 1925, to June, 1928
 (Name and Location)

(2) From 19 to 19
 (Name and Location)

Graduated? Yes
 (Yes or No)

(3) College or University, other than law study Western Reserve University, Cleveland Ohio
1928-1931; Ohio State University - 1932-1933; and 1934-35.
 (Name and Location of Each College Attended)

Dates of attendance. From 19 to 19

Received Degree? Yes What Degree? BA-1931; MA-1935
 (Yes or No)

Was Degree received prior to commencement of law study? Yes
 (Yes or No)

(b) When did you commence the study of law? September 18, 1943
 (Month, Day, Year)

(c) Before commencing the study of law, had you completed at least two years (60 semester or 90 quarter units) of college work? Yes
 (Yes or No)

(d) If not, were you 25 years of age or more when you commenced the study of law?
 [See requirement above.] (Yes or No)

(e) How old were you when you commenced to study law? 34 yrs 6 mos
 (Year) (Months)

7. Legal Education and First-Year Law Students' Examination. [Requirement: Please see the Rules Regarding Admission to Practice Law in California. If you do not satisfactorily complete the first-year course of law in an accredited law school, or have not been admitted to practice law in another common-law jurisdiction, you must take the first-year law students' examination after the completion of your first year of study. Those who do not graduate from an accredited law school must study law diligently and in good faith for at least four years. You should ascertain whether your law school is accredited.]

(a) Have you attended or are you now attending a law school? Yes If so, state school or

schools, and give dates of attendance. School of Law,
University of California - Since 9/18/43
 (Name and Where Located) (Dates of Attendance)

(b) Do you intend to show graduation from a law school as qualifying you to take the bar examination?

Yes

If so, (Name) what law school? *School of Law - New Gibraltar Coll.* (Location)

If not, describe and outline on a separate sheet your proposed study of the law from now until the time you expect to apply for the bar examination. State briefly here and where you expect to study the subjects you expect to cover and the approximate time you plan to devote to these studies.

(c) Have you ever been admitted to practice law in any jurisdiction?

No

(Yes or No)

If so, where and when?

References. List the names, addresses, and occupations of three or more responsible and reputable citizens with whom you have personal acquaintance.

(Name)	(Address)	(Occupation)
(1) Dr. Robert Stewart	947 48th - L.A.	Doctor
(2) Dr. H. J. Lee	1719 Wilshire Blvd - L.A.	Doctor
(3) William Burke	City of Hope, DuPont, Cal.	Hospital, Surg.
(4) Carey McWilliam	541 S. Spring St. - L.A.	Attorney
(5) John McManis	112 W. 9th St. - L.A.	Attorney
(6) M. J. Halpin	2027 Park Dr. - L.A.	Manufacturer

State of *California*

County of *Los Angeles*

Robert Stewart, being duly sworn, says: I have read the foregoing questions and have answered the same in my own handwriting fully and frankly. The answers are complete and true to my own knowledge.

Subscribed and sworn to before me this

4th

day

at *Tramelen*

H. J. Main
(Notary Public)

My commission expires

The Committee of Bar Examiners of The State Bar of California

2007 Central Tower
San Francisco 3

440 Rowan Building
Los Angeles 13

IN RE APPLICATION OF

FOR EXAMINATION FOR ADMISSION TO
PRACTICE LAW.

ROPHAEEL KONIGSBERG
(When using or providing it to appear on your certificate of admission)

SPACE FOR USE OF COMMITTEE OF BAR EXAMINERS ONLY	
Registration as a Law Student No. <u>28697</u> Exempt from First Year Law Students' Examination? <input type="checkbox"/> or Passed First Year Law Students' Examination? <input checked="" type="checkbox"/> CHECK ONE Fingerprinted <input checked="" type="checkbox"/> Report in <input checked="" type="checkbox"/> Law School Cert. in <input type="checkbox"/>	Application No. <u>1-4</u> Date Filed <u>6-30-53</u> Regular Fee Paid \$ <u>40</u> (Bar) Late Filing Fee \$ _____ Number of times applicant has taken California Bar Examination _____ Application approved _____ disapproved _____

STUDENT'S APPLICATION AND AFFIDAVIT

To the Committee of Bar Examiners:

I hereby apply to be examined as to my qualifications and eligibility for recommendation to the Supreme Court for admission to practice law in the State of California.

The required fee* of \$ 40.00 accompanies this application.

I desire to present myself for the bar examination in the city of Los Angeles
(Insert either San Francisco or Los Angeles)

on October, 1953
(Insert either April or October)

Home Address: 2446 Echo Park Ave - R 34874
(Street and Number) (Telephone)

Los Angeles 26, California
(City) (State)

Office Address, if any: None
(Street and Number) (Telephone)

Dated July 29, 1953

*Under Section 71 of the Rules Regulating Admission to Practice Law in California for amount of fee.

INSTRUCTIONS TO THE APPLICANT:

This application must be filed not less than three months nor more than six months prior to the commencement of the examination desired to be taken. Applicant must fill out the questionnaire in ink in his own handwriting. Each question and inquiry and each subdivision thereof must be answered fully, truthfully and accurately. Any omission or inaccuracy may be deemed ground for disapproval and rejection. If the space for any answer is insufficient, the applicant may complete his answer on a rider signed by him and specifying the number of the question to which it relates. All statements are to be based on applicant's own information unless the statement is apparently qualified to show the source of his information.

The requirements for admission to practice law are contained in the Rules Regulating Admission to Practice Law in California, copy of which may be obtained from either office of the Committee of Bar Examiners. Briefly stated, the Rules provide that, in order to take the bar examination, a person shall:

- (a) Be a citizen of the United States.
- (b) Be of the age of at least twenty-one years.
- (c) Be of good moral character.
- (d) Have completed at least two years of college work, or have reached the age of twenty-five years, before beginning the study of law. If have completed two years of college work within the meaning of this rule, the applicant shall have received passing grades in at least six semester, or 30 quarter, units of work in a college requiring classroom attendance of its students. [Students who had not completed two years of college work nor reached the age of twenty-five years at the time of commencing the study of law may nevertheless be entitled to exemption from the precal college requirements if they do not claim credit for any law study pursued before, and prove that they have entirely complied with the legal educational requirement after arriving at the age of twenty-five years.]

(e) Be and continuously have been a bona fide resident of the State of California for a period beginning at least three months prior to the date of the bar examination and continuing to and including the date of admission.

(f) Have registered with the committee as a law student within three months after beginning the study

of law. (The committee, upon good cause being shown, may permit a later registration.)

(g) Have either:

- (1) Graduated from an approved law school requiring substantially the full time of its students for at least three years, or
- (2) Graduated from an accredited law school requiring a part only of the time of its students for at least four years, or
- (3) Studied law diligently and in good faith for at least four years.

(See section 91 of the Rules for more detailed information.)

(h) Have passed a first-year law students' examination given by the committee after the completion of his first year of law study unless entitled to exemption therefrom. To be entitled to exemption an applicant shall:

- (1) Have satisfactorily completed the first-year course of instruction in a law school accredited by the committee at the time of his matriculation therein or so accredited at the time he completes the first-year course; or
- (2) Have been admitted to practice law in a common-law jurisdiction.

APPLICANT'S QUESTIONNAIRE AND AFFIDAVIT

- NAME 1. (a) State full name RAPHAEL K. NIGSBERG
- (b) Have you ever been known by any other name? Yes If so, state and give details. If change was made by court order, attach hereto a certified copy of such order. If married woman, give maiden name. (He should state)
- (c) State whether you are married or single, and if married, the name (maiden name if applicable) of your spouse. Married
Wife maiden name - Sylvia Lettner
- (d) State name of
Father Julius K. Nigsberg
Mother (maiden name) Rosa Nigsberg
- AGE 2. Date of Birth March 25, 1911 Age 42 3
(Years) (Months)
- CITIZENSHIP 3. (a) State your birthplace Austria
(b) Are you a citizen of the United States? Yes
(c) If born in a foreign country, state age at which you came to the United States Syria
(d) If claiming citizenship other than by birth in the United States, state the basis of such claim and exhibit proof. If naturalized, state the date when and the place where, and produce certificate. (He should state)
- RESIDENCE 4. (a) Are you a bona fide resident of California? Yes
(b) If so, from what date have you continuously been such a resident? June 1936
(c) State the facts upon which you base your claim to have become and to be such a resident. Moved to Los Angeles in June 1936 to take position with Council of Social Agencies
(d) Are you presently actually living in California? Yes
(e) If not, explain the circumstances of your absence. (He or she)
(f) Do you intend to remain a bona fide resident of California until after you have been admitted to practice (see subdivision (e) of foregoing requirements)? Yes

5. State every address (including your present address) you have had since you were sixteen years of age, commencing with the earliest. If more space is required, continue on an attached sheet.

City and State	Street and Number	From (Mo. & Yr.)	To (Mo. & Yr.)
Cleveland, Ohio	9919 Popper Ave	March 1907	Sept 1929
Franklin, Ohio	(Kinsman Laundry House)	Sept 1929	June 1931
Cleveland, Ohio	9919 Popper Ave	June 1931	August 1936
Columbus, Ohio	(Boudry House)	August 1936	August 1936

(He attached sheet for remaining addresses.)

PRELIMINARY
EDUCATION

6. My education other than the study of law was received as follows:

- (a) Grammar School. (1) Longwood - Boston, Mass. From Sept. 1917 to June 1922
(Name and location) (Date and location)
(2) Longwood Jr. H. School From Sept. 1922 to June 1925
(Name and location) (Date and location)

Graduated? Yes
(Yes or no)

- (b) High School. (1) Franklin H. - Cambridge, Mass. From Sept. 1925 to June 1928
(Name and location) (Date and location)
(2) _____ From _____, 19____ to _____, 19____
(Name and location) (Date and location)

Graduated? Yes
(Yes or no)

(c) College or University, other than law study:

- (1) Eastern University - Cambridge, Mass. From Sept. 1928 to June 1929
(Name and location) (Date and location)
(2) State U. - Cambridge, Mass. From Sept. 1929 to June 1931
(Name and location) (Date and location)

Received Degree? Yes If so, what Degree? B.A. and M.A. in 1931
(Yes or no) (Date and location)Remarks: Honors, etc. 1931-2 - Completed two semesters of work toward B.S. degree, interrupted by World War I, at Claremont College, Claremont, Calif.

- (d) Did you complete at least 60 semester, or 90 quarter, units of college work prior to commencing the study of law? Yes If so, how many units did you so complete? Semester units: _____
(Yes or no) (Date and location)
Quarter units: Completed by graduate If not, were you at least 23 years of age when commencing the study of law? _____ How old? _____ [See requirement (d) at the top of this questionnaire.]
(Yes or no) (Date and location)

REGISTRATION

7. Have you registered as a law student with the Committee of Bar Examiners? Yes
(Yes or no)

(Applicant must register as a law student before filing this application.)

FIRST-YEAR
LAW
STUDENTS'
EXAMINATION8. (a) Are you entitled to exemption from the first-year law students' examination? Yes
(Yes or no)

If so, check basis of exemption:

☒ I satisfactorily completed the first-year course of instruction in a law school accredited by the committee at the time I matriculated therein or accredited at the time I completed the first-year course; or☐ I have been admitted to practice law in another common-law jurisdiction, to wit:

(Name of jurisdiction)

(b) If not entitled to exemption, have you taken and passed the first-year law students' examination?

Yes If the answer is yes, give the date of the first-year law students' examination in which you were successful: June, 19____
(Yes or no) (Date and location)LEGAL
EDUCATION

9. My legal education was received as follows:

- (a) Day Law School. (1) U.S.C. - Los Angeles From Sept. 1935 to June 1935
(Name and location) (Date and location)
(2) _____ From _____, 19____ to _____, 19____
(Name and location) (Date and location)

Average number hours instruction and study per month: 250 hoursGraduated? Yes If so, give date June 1935
(Yes or no) (Date and location)Degree received, if any B.S. (Month, year)

[As proof of such study, file a Law School Certificate using the Committee's form.]

(b) Night Law School (or Day and Night Law School):

- (1) None From _____, 19____ to _____, 19____
(Name and location) (Date and location)

- (2) _____ From _____, 19____ to _____, 19____
(Name and location) (Date and location)

Average number hours instruction and study per month: _____ hours

Graduated? _____ If so, give date _____
(Yes or no) (Month, year)

Degree received, if any _____

[As proof of such study, file a Law School Certificate using the Committee's form.]

- (c) Correspondence Law School None (Name, location)
 Inclusive dates courses were taken _____, 19____, to _____, 19____
 Average number of hours study per month _____ hours
 Graduated? _____ If so, give date _____ (Month, year)
 [As proof of such study, file a Law School Certificate using the Committee's form.]
- (d) Law Office Study None (Name and address of attorney)
 Inclusive dates of such study _____, 19____, to _____, 19____
 Average number of hours per month of instruction, study and research _____ hours
 [As proof of such study, file an Affidavit of Law Study and an Attorney's Certificate of Law Office Study using the Committee's forms.]
- (e) Private Study None (Place where study occurred)
 Inclusive dates of such study _____, 19____, to _____, 19____
 Average number of hours per month of instruction and study _____ hours
 [As proof of such study, file an Affidavit of Law Study using the Committee's form.]
- (f) Do the above statements of law study and instruction include all such study and instruction? Yes
 If not, explain additional study on an attached sheet. B

10. During the period of time devoted to law study I also devoted to occupations, employment, or activities other than the study of law during each year indicated the following average number of hours per week

Year	Average Hours Per Week	Nature of Activity
1950-51	15	Research and home maintenance
1951-52	15	"
1952-53	15	"

PREVIOUS
EXAMINATIONS

11. (a) How many times have you taken the California (students') bar examination? None
 (b) State the month and year of each examination _____

- (c) Did you ever apply to take the California bar examination other than for the examinations listed above? No If so, state disposition of each such application _____
 (Yes or no)
- (d) Did you ever apply to take the California (out of state) attorneys' examination? No
 If so, state disposition of such application _____
 (Yes or no)

12. Have you ever applied for admission to practice law in any other state, jurisdiction, or country? No (Yes or no)

If so, give name of state, jurisdiction, or country, and state specifically the disposition made of each application. If granted, state whether you were admitted, giving the name of the court by which admitted, and the date and place of such admission.

13. If you have been admitted to practice law in any other jurisdiction, make a complete statement of your employment or engagement since being admitted. Include temporary or part-time work. State as to each employment or period of private practice.

- (1) The periods during which you were employed as an attorney, or engaged in private practice, with the inclusive dates.
- (2) The exact addresses of the offices, including room numbers, or places at which you were so employed or engaged and the names and present addresses of all employers, partners, associates, or persons sharing office space, if any.

(5) The reason for the termination of each employment or period of inactive practice

(PLEASE PRINT ALL NAMES AND ADDRESSES)

(1)

(2)

(3)

14. Have you ever applied for or held a license, other than as an attorney at law, the procurement of which required proof of good character (i.e., certified public accountant, patent attorney, real estate broker, etc.)? *No*
 For each such application, state the date it was made, the name and address of the authority to whom made, and the disposition thereof.

15. (a) As a member of any profession or organization, or as a holder of any office, or as an attorney.

(1) Have you ever been suspended, disbarred or otherwise disqualified? *No*

(2) Have you ever been reprimanded, censured or otherwise disciplined? *No*

(3) Have any charges or complaints, formal or informal, ever been made or filed, or proceedings instituted against you? *No*

If an affirmative answer is given to any of the foregoing questions, state as to each such case, the date, the nature of the charge, the facts, disposition of the matter, and the name and address of the authority in possession of the records thereof.

(b) Have you ever held a bonded position? *No* If so, specify on an attached sheet the nature of position, dates, amount of bond and whether or not anyone ever sought to recover upon your bond or to cancel the same.

(c) Have you ever served in the armed forces of the United States? *Yes*

(d) If so and you have been separated from such service, state nature of such separation, and if other than honorable, specify type of discharge and circumstances surrounding your release.

Honorably discharged - road of Cyprus - 4/17/46

(e) As a member of the armed forces have any charges or complaints, formal or informal, ever been made or filed, or proceedings been instituted against you, or have you ever been a defendant in any courts martial? *No*

If so, state on an attached sheet the date, the nature of the charge, the facts, the disposition of the matter, and the name and address of the authority in possession of the records thereof.

MORAL CHARACTER 16. Have you ever been summoned, arrested, taken into custody, indicted, convicted or tried for, or charged with, or pleaded guilty to, the violation of any law or ordinance or the commission of any felony or misdemeanor, or have you been requested to appear before any prosecuting attorney or investigative agency in any matter? Include all such incidents no matter how minor the infraction or whether guilty or not. Although a conviction may have been expunged from the records by order of court a nevertheless must be disclosed in your answer to this question? *Yes*

If so, state the facts completely but concisely for each case, and give the date, name and nature of the offense, name and locality of court, and disposition of each such matter. If more space is required, continue on an attached sheet.

See attached sheet

(a) Have you ever been a party to or had or claimed an interest in any civil (including divorce) proceedings? *Yes* In April 1946, I was in small claims court for \$100 for Helen Miller, and won.

(b) Have you ever been declared a ward of any court or an incompetent or committed to any institution? *No*

(c) Have you ever been charged with fraud, either formally or informally? *No*

If so, give full details on an attached sheet for (a), (b) or (c), including dates, the court, if any, reference to the court records, if any, the facts, the disposition of each such matter, and if the court records are available, give to the best of your ability, the names and addresses of all persons involved, including counsel. If a divorce proceeding, state grounds.

(Yes or no)

If so, list them on a separate sheet, giving names and addresses of creditors, amounts, dates and nature of debts, and reasons for nonpayment.

(b) Do you owe any other indebtednesses that are past due (including those barred by the statute of limitations)?

(Yes or no)

If so, list them on a separate sheet, giving names and addresses of creditors, amounts, dates and nature, and reasons for nonpayment.

19. Were you ever dropped, suspended, expelled or disciplined by any school or college? no

(Yes or no)

If so, state reasons and give details fully on an attached sheet

20. Have you ever been employed in any occupation, business, or profession *other* than the law? yes

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If so, give name and address of each employer, the business, the position you occupied and the month and year of the beginning and ending of each employment, and the reason why you left each employer.

~~PLEASE PRINT ALL NAMES AND ADDRESSES~~

Month and Year	Name of Employee	Address of Employee	Nature of Business	Position	Reason for Leaving
9/31 - 4/32	Arthur Lindsey, Jr.	Chilmark, Ok.	Lumbering	Clerk	To leave
9/32 - 6/33	David J. Edgerton	"	Education	Teacher	To enter armed services
9/33 - 8/34	Raymond B. Bishop	"	Public Works	Inspector	To enter " school "
7/34 - 8/35	Robert Leonard Long	Chilmark, Ok.	"	"	To leave " "
9/35 - 6/36	Ray J. Smith	Washington, D.C.	Public Works	Inspector	"
9/36 - 8/37	Samuel J. Smith	Los Angeles, Cal.	Public Works	Inspector	"
9/37 - 10/38	Robert J. Smith	"	"	Inspector	Regional Administrator

21. Have you ever been dismissed, discharged or requested to resign by any employer? Yes

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If so, state on an attached sheet the name and address of each such employer, and the date, cause and cir-

22. Is there any incident of a derogatory nature in your life not called for by the foregoing questions that may have some bearing on your character and fitness to practice law? No

Yes or No?

If so, state facts fully but concisely on an attached sheet

23. State the names and addresses of three or more members of the Bar or judges in each community in which you have resided since you were 16 years of age, with whom you have close personal acquaintance. If you are not known to at least three members of the Bar or judges in each such community, then, as your remaining references, state names, addresses and occupations of reputable and responsible business or professional men or women who are closely acquainted with you. (Persons related to the applicants by marriage or blood are not suitable as references. Do not give as references teachers or classmates who merely knew you at school.)

(PLEASE PRINT ALL NAMES AND ADDRESSES)

	Name	(Known)	Address (City, State)	Occupation	Length of Time Known
(1)	Home in Cleveland, Ohio				
(2)	Home in Columbus, Ohio				
(3)	Home in Washington, D.C.				
(4)	Edward Brock	1630 1/2 Yuma St.	Cal.	Attorney	15 yrs
(5)	Harriet Brown, Jr.	315 W. Kernan St.	Cal.		1 yr
(6)	Barbara Vogel	1350 Alhambra Blvd.	Cal.		1 yr
(7)	Ruth Johanna Cohen	900 Halcyon St., S. E.	Cal.	Minister	17 yrs
(8)	Francis Halpern	2027 Rock Dr., S. E.	Cal.	Businessman	13 yrs
(9)	Chancey Alexander	2067 1/2 7th St., S. E.	Cal.	Social worker	15 yrs

State of California

County of Los Angeles

Raphael Konigsberg

Raphael Konigsberg being duly sworn, says: I have read the foregoing questions and have answered the same in my own handwriting fully and frankly. The answers are complete and true of my own knowledge.

Subscribed and sworn to before me this _____

29th of June AD 1953

History Publishers

My Commission Expires January 3, 1957

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Applicant's Exhibit "A"

THE
INFORMATION
BOOK ON GENE

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In November 1913, the Information and Education Division was established in the War Department as a functional staff division, under the Commanding General, Army Service Forces, for administration and supply. It was charged with the supervision and policy control of those activities which are concerned with the mental training and attitudes of the soldier, as distinguished from activities which contribute primarily to mental and physical rest and change for troops, which continued to be a responsibility of the Special Services Division. The mission of the Director, Information and Education Division, was defined as follows:

" the planning, production, dissemination, and supervision of materials and programs for the information, orientation, and nonmilitary education of troops and with research on troop attitudes, in order to assist commanders in maintaining a high state of morale."

Information-education staffs were set up in all higher commands; information-education personnel were authorized in all units and installations down to and including the regimental and post level; provision was made for the appointment of additional duty personnel in lower echelons; and the stipulation was restated that all military personnel "will be given training in orientation," and that in "regiments, groups and separate battalions, squadrons, companies and detachments, or equivalent organizations, not less than one undivided hour per week will be devoted to this training during duty hours." Throughout the Army, in short, orientation became a continuing training program, the information and education program became an established responsibility of commanders, and information-education personnel, primary and additional duty, became members of the staff or command team in every headquarters and organization.

This publication outlines the principles, purpose, and scope of the information and education program, and describes the duties and responsibilities of information-education personnel. For clarity, it is addressed in large part to the information-education officer at the regimental level, since at that level the information-education officer and his assistants are closest to the troops for whom the program is designed. The reader should have little difficulty in adapting the procedures and suggestions contained in this publication to his own problems. A careful reading of War Department Circular No. 360, 1914, as amended, is essential to a clear understanding of the material contained in this publication.

PURPOSE AND SCOPE OF INFORMATION AND EDUCATION IN THE ARMY

Section I. MENTAL TRAINING OF SOLDIER

1. Importance of Mental Training

All armies now recognize the need for training the soldier's mind, in order to maintain his zeal for work and combat. The United States holds the belief that the soldier's mind should be free, informed, judicious, able to protect itself from sophistry and falsehood, alert and understanding of the larger problems of command, and of his Nation.

Such qualities of mind can grow only in the presence of a free press and freedom of speech, and they can only serve the individual and his democratic society adequately if he has the opportunity to nourish such qualities through information and education.

Free access to information, uninhibited discussion with his fellows, and a common opportunity to pursue self-education are three major resources which support the American concept of the mental training of the soldier in a democratic country.

But troops in vast numbers, on duty all over the world and segregated from familiar sources of news, of understanding of events, and of education, could hardly fulfill the natural rights of members of a democracy to know the truth and to grow through it, unless the Army they belong to would undertake to supply the needs of their minds as well as their material wants. This the Army does through its Information and Education program.

The nature of the Information and Education program in the American Army springs from the essential qualities of the men who make up the Army and the institutions from which they derive. These institutions, and the national traditions which form the American soldier even before he enters the Army, provide him with free access to many sources of information, opportunities for free discussion and opportunities for an unbiased education. These things produce a quality of initiative, self-reliance, and self-discipline which is held to be peculiarly American. When these qualities are combined with adequate military training and equipment they enable the American soldier to defeat the enemy, in many

cases without numerical superiority. Thus, the Army is in this sense the beneficiary of the free institutions of America which have provided such qualities for its citizen soldiers.

The Army tries to retain these qualities in its troops, as a careful reading of the Staff Officers Field Manual, FM 101-5, or Military Courtesy and Discipline, FM 21-50, will indicate. But the forces which make for initiative in the Army tend to be offset by many other unfavorable factors. The soldier's food, transportation and equipment are furnished without apparent relation to his own efforts. His officers are forced by the structure and needs of military organization to demand prompt obedience to orders and subordination of the individual, and all too often there is neither time nor interest to make explanation. Indeed to many harassed officers, the easiest and wisest course may seem to consist merely in demanding conformity of the soldier without regard to his basic and valuable American characteristics. But the larger view indicates that such a course would be dangerous indeed.

If army life should be of a nature to change some of the most valuable traits with which the young civilian enters the Army, the Army would not only lose the unique qualities of initiative and self-reliance in its soldiers, but would before long lose the confidence of the American people. The Army cannot be at odds with the Nation on such a basic issue as that of the national character. Indeed, modern wars are not fought by armies alone, but by peoples sustained by belief in their own way of life. So long as American life is based on freedom and respect for the individual, it is necessary that the Army, so far as possible, base its handling of the soldier on the same principles. This is not an easy task; it cannot be accomplished by negative action. The Army must have a positive program, clearly understood and carried out through command channels, so that these American traits do not die from neglect or from lack of material on which to foster their spirit. This it seeks to provide through the information and education program.

It is not enough, however, that troops have access to information in general and an opportunity for free discussion of that information, together with educational opportunities fitted to their personal needs. They must also have access to particular types of information at particular times—either to resolve their doubts about the war and their individual roles in it, or to give them the confidence they need when facing difficult military operations.

The essence of the soldier in war is the ability to engage in battle and defeat his enemies. In the complexity of modern war this ability is often exemplified in duties performed far from

scenes of battle. But war remains simple to this extent: men do come to grips with each other, and the decision, for which all else is preparation, occurs on the battlefield. For this reason, it is the combat soldier who offers the most critical test (though not necessarily the most typical) of the validity of the view held by the United States toward its Armed Forces. If he is informed, and if, on the basis of the information he receives, he develops a positive attitude and an aggressive spirit, the information and education program has accomplished its purpose, namely, to contribute to success in battle.

The great majority of troops however, never engage in actual combat. A mental training program must recognize the needs of those men who are required to work hard and conscientiously in routine assignments, frequently in isolated situations. It must assist newly inducted troops in making the difficult adjustment from civilian to military life, and those for whom the problem is reversed. It must be adapted to the thousands of casual officers and men long absent from familiar civilian surroundings who are without comparable organizational ties in the Army. It must recognize those men whom war has injured physically and mentally. These and similar problems which affect the attitudes of troops are byproducts of military necessity. Wars must be fought in terms of masses; military policies must be determined in the light of over-all military necessity. The soldier should understand that. He should know that inconveniences and hardships do not happen to him as a result of arbitrary decisions by commanders, but that they represent part of his own contribution to victory. To give him this understanding is one of the responsibilities of the information-education officer.

In this buffeting, to which all are subject at one time or another, the information and education program is an alleviating factor. Each soldier has the opportunity to know and understand the common objective; why it is that he and his Nation must carry on until every obstacle to a lasting peace has been overcome; why that objective cannot be gained without the unquestioning sacrifice of his personal comfort, ambition, and, if need be, his life; why, if victory is to be won, the individual must temporarily be subordinated to the larger group. To each soldier, regardless of how insignificant his job may appear, history offers a page on which to record his contribution to the America of the future; to state with what degree of unselfishness and understanding he subjected himself to the vicissitudes of military necessity. Among the heroes of the war will be those soldiers who kept faith through the days of dreary routine, unsung but indispensable.

The mental attitudes of troops and their understanding of the

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Having provided information in this way, it is a further responsibility of the Army and of the commander to insure that the soldier is permitted to hold varied opinions, without prejudice to his status, short of any that compel his disloyalty to the United States. That the Army is scrupulous in its performance of this responsibility is evident in the care with which the religious beliefs of the soldier are protected.

6. Integrity of Army Information

Control of the program of Army information and education is centralized in the War Department division responsible for its policy and operation. Every effort is made to insure the integrity of the ideas, expression, and materials of the program. The responsibility is a great one, and is to be shared by every officer throughout the chain of command, who is charged with any part of the duty of information and education. To be true to the historical ideals of the United States, the individual soldier's prerogatives of thought and expression, and the Army's traditional position of nonpartisanship—this is the challenge to those charged with the Army's purpose to bring the fullest possible intellectual resources to the Armed Forces, and to do it in the Army's idiom. If the soldier's experience is to be reached, respected, and reflected, the Army must remain faithful to its responsibility to provide free, full, and impartial information to troops otherwise largely cut off from the understanding of events in the world at war.

Section III. GIVING SOLDIER ACCESS TO FREE DISCUSSION

7. Understanding Through Discussion

The information and education program provides a means for soldiers to express and compare their views on matters of general interest through organized group discussion. Discussion periods are provided for both "on-duty" and "off-duty" time. Discussions scheduled for on-duty time are conducted, preferably, upon a platoon basis and are an integral part of the soldier's training. Attendance, therefore, is compulsory. Off-duty discussions are arranged to meet the desires or needs of troops for additional opportunities for discussion; attendance at these off-duty discussions is voluntary.

In both types of discussion periods, participation in the discussion is voluntary; each man may express his opinions, but is not required to do so. The soldier may exercise his inherent right of free discussion within the bounds of military security, mili-

tary courtesy and discipline, and commonly accepted standards of decency. This freedom, however, must not be permitted to become *license* for deliberate talk calculated to undermine the confidence of his fellow soldiers in the righteousness of the cause for which we fight, our Allies, our leaders, our faith in our country and its future. This restriction is similar to the self-imposed restriction necessary for successful discussion by any group in a democracy.

8. Responsibility of Discussion Leaders and Privileges of Participants

Subjects discussed by troops in either type of discussion period generally fall into three main fields of ideas. It is essential that the discussion leader distinguish one from the other, and handle specific discussion topics accordingly:

a. IDEAS WHICH ARE BASIC TO THE AMERICAN TRADITION. Such ideas include belief in the integrity of the individual, and a belief in the democratic process of government in the United States; also ideas which flow inevitably from those beliefs, are embodied in the Constitution itself, and are the practical basis for the American way of life. Examples are: that democracy is practical; the belief of Lincoln and Jefferson in the soundness of the majority of opinion of the common man when properly informed; racial and religious tolerance.

As to these, the information-education officer must have an outspoken and affirmative attitude, for these are the fundamentals on which all else we do is based. They are presupposed in the American tradition, and in the acts of democratic government which have given us our national character, by which we take our stand. These fundamentals should inform our whole approach to more specific ideas and subjects. As to these fundamentals, the discussion leader will energetically present to the soldier a concluded opinion.

b. POLICIES OF THE GOVERNMENT. These are expressed in laws enacted by the Congress, in executive orders, and in regulations and directives issued by the War Department. They represent, in the case of Congress, the majority decision of the American people; in the case of executive orders, the exercise of the President's responsibility as the duly constituted head of the Government; and in the case of the War Department, the unified command necessary to the fulfillment of the military mission.

In such matters, the discussion leader has a clear responsibility for explaining to the soldier the reasons for the majority opinion, and the reasons for acceptance by the soldier of the majority decision. The soldier may discuss matters pertaining to

curately; be sure that his programs and materials, and his methods of using them, are within War Department policy and within the objectives of the information and education program; have valid reasons for believing that his own materials are more suitable for a specific situation than those received from higher echelons.

The information-education officer should not overlook the staff resources which may be tapped in relating the weekly discussion to the interests and needs of troops. From S-1 he can obtain data on the awards and decorations within the unit, which add color to a discussion on that subject. S-2 will have information on the history and accomplishments of the unit. S-4 might be requested to prepare material on the place of logistics in winning the war. The special services officer (A&R) is peculiarly fitted to put on orientation shows in order to drive home information which lends itself to dramatization. These are merely suggestions; the alert I&E officer will think of many ways in which his fellow staff officers can help his program, just as he helps theirs from time to time.

34. Qualifications of an Information-Education Officer

It is as difficult to describe the ideal information-education officer as it is to describe the typical soldier. The scope of his responsibilities best indicates the qualifications an information-education officer should possess. There are, however, two basic beliefs which all information-education officers *must* have, without which they can scarcely be considered qualified.

a. These basic beliefs are--

(1) Belief in the inviolability of the individual. This belief is basic to the American tradition. It is both a religious and an ethical concept, and in its practical application is the basis for the American way of life.

(2) A belief in the democratic processes of government in the United States; that democracy is practical; the belief of Jefferson and of Lincoln in the soundness of the majority opinion of the common man when properly informed. This again is a concept of American life.

He should not only hold these beliefs, but be able to implement them for the commander. He should strongly recommend that these principles be the primary basis of selection of company information-education officers.

b. As practical background, it is desirable that the unit information-education officer have successful experience as a commander of troops, or comparable experience which clearly indicates high qualities of leadership. Desirable civilian background includes experience in one of the following, or similar

MOBILIZATION REGULATIONS

No. 1-10

WAR DEPARTMENT

Washington, March 5, 1943.

MORALE

SECTION I Basic policies

Paragraph

II. Major factors affecting morale

1-8

III. Recreation and welfare

10-20

IV. Special provisions for morale

23-28

30-43

SECTION I

BASIC POLICIES

Paragraph

Scope and purpose

1

Importance

2

Peacetime procedures

3

Special mobilization procedures

4

Major factors affecting morale

5

Organization for control and supervision over morale actions

6

Financing

7

Enforcement

8

1. **Scope and purpose.** The directives herein are founded on those included in MR- General and MR-1-1 and are intended to set forth in detail those factors which have a decided influence on morale, to show how each of these factors should be dealt with in order to insure a high state of morale, and to indicate the most suitable and practicable organization for the control and supervision of morale factors.

2. **Importance.** Morale underlies all aspects of military life. It is born of just and fair treatment, thorough training, and pride in self, organization, and country. The establishment and maintenance of good morale and the prompt elimination at their inception of all conditions tending to produce bad morale constitute a primary function of command.

3. **Peacetime procedures.**—Peacetime procedures as to morale form the basis for important special measures which must be initiated in a major emergency.

4. **Special mobilization procedures.**—These regulations include basic instructions applicable to any and all emergencies and set forth special procedures which may be utilized if and when directed by the War Department, according to the nature of the emergency and the method of transition from one to the other.

5. **Major factors affecting morale.**—a. *Administrative and related factors.*—Almost every activity pertaining to the administration, supply, and training of an army will be found to affect morale either directly or indirectly. Among these activities are—

- (1) Development of the individual.
- (2) Religious instruction, services, and ministrations.
- (3) Promotion and decorations.
- (4) Leaves of absence and furloughs.
- (5) Discipline.

*This pamphlet supersedes MR 1-10, June 12, 1942.

(c) Make provision for the care of women and children while visiting in the camp, including the maintenance of an up-to-date list of accommodations available in adjacent communities.

(d) Conduct a cafeteria for the benefit of visitors to camp.

e. Other services.—In addition to the hostess service as indicated in *d* above, other services, including technical, domestic, and janitor services, will be provided as required.

28. Organizational clubs.—Clubs other than service clubs will be as authorized by local commanders. Buildings, if available, and heat and light only will be provided by the War Department. Organizational clubs will furnish club features in which women are not included.

29. Off-duty education.—*a. General.*—The off-duty education program of the Army will be expanded upon mobilization to provide educational opportunities to all service men wherever stationed. This is to be accomplished by an extension of facilities for correspondence study, group instruction, and library service.

b. Objects.—The objects of the off-duty education program are to provide educational opportunities to meet the requirements of the command, to furnish assistance to personnel of the Army who lack educational prerequisites for assignment to duty which they are otherwise qualified to perform and to meet the requirement for promotion, to enable those whose education is interrupted by military service to maintain relations with educational institutions and thus increase the probability of the completion of their education upon their return to civil life, and to improve the value of Army personnel as citizens upon return to civil life.

c. Responsibility.—Planning, initiation, stimulating, and facilitating the off-duty education program is the responsibility of the Director, Special Service Division.

d. Correspondence study.—The facilities of the Army Institute (AR 350-3100) will be expanded upon mobilization to meet the increased demand for correspondence courses. In time of war or state of national emergency all courses must be approved as contributing to military efficiency; new courses are to be provided to meet the needs of the service. Arrangements with publishers and educational institutions to give instruction by correspondence to Army personnel to purchase text material or syllabi for use in Army Institute courses, and to arrange for reproduction of text material or syllabi written or developed by publishers and educational institutions will be expanded.

e. Group instruction.—Upon mobilization facilities for group instruction will be extended. Arrangements for developing and supplying teaching aids, written, visual, and auditory, will be expanded as deemed advisable. Liaison will be established with foreign educational officials and foreign universities and colleges to make foreign educational facilities available to Army personnel.

30. Army library service.—*a. General.*

- (1) The Army library service in mobilization will be an expansion of that service as operated in peacetime.
- (2) The size of libraries and personnel employed therein will be appropriate to the command served (AR 350-80).
- (3) Books for the Army library service will be procured and distributed by the Director, Special Service Division, or by commanding generals of service commands, as may be indicated.

[fol. 321]

APPLICANT'S EXHIBIT "C"

[Restricted]

ARMY TALK

ORIENTATION FACT SHEET 51

War Department—Washington 25, D. C. 23 December 1944

What This Orientation Deal Is All About

Note to the I and E Officer: The subject of this week's issue, originally planned for 25 November, brings the remaining subjects as published in ARMY TALK 45, 11 November, back to their originally scheduled dates. This issue explains what Army orientation is and why we have it. The discussion should emphasize: (1) American Army orientation, unlike Axis indoctrination, is based on the principle of promulgation of truth; (2) It seeks to have the men achieve clear understanding of issues through participation in free and open discussion; (3) It is designed to make our men "the best informed soldiers in the world" so that we may handle ourselves better as soldiers in the war and as citizens in the peace years ahead. Additional discussion questions are grouped in a separate box.

THE people of the United States were mentally unprepared for the war. When it came, it was described as a "stunning blow". We suddenly realized that the Axis powers were out to "get" us.

We were angry. We easily grasped the fact that we had been attacked, but many of us were confused as to *why* we were attacked. We realized that we had to defend ourselves. But many of us did not fully understand the sacrifice and devastation that a total war for survival involved.

The Axis knew we were unprepared and tried to make the most of our unpreparedness. They knew we didn't want war. They knew that we had no ambitions for world domination, or "lebensraum", or enslavement of unarmed minorities, or enthronement as a "master race". Knowing this, their propagandists sought to divide us and weaken our will to fight, to sell us the idea that the war was the fault of our leaders and not of the Axis, to confuse us so that we could not achieve an all-out effort. They had succeeded in

confusing and dividing some of the Poles, French, Chinese, and the rest of their victims. They had high hopes of confusing and dividing us.

Enemy propaganda can only succeed in its purpose if we do not understand what is actually at stake in this war. And even if Germany and Japan did not attempt to infect us with their propaganda, it would still be important for us to understand why we must sweat out our time in the Army. Whether in combat or toiling at endless supply tasks we should know why the danger and the drudgery are necessary. Understanding strengthens our ability to overcome the Axis soldier and to meet squarely the problems we'll face once the fighting stops.

Our enemies' last hope is based on the fact that many of us are uncertain in our own minds as to what is at stake. They still dream that, because of weariness or confusion or both, we will give them term which will enable them to start World War III.

Know The Score

(Question: What do we mean by orientation in the Army?)

Usually we think of orientation in connection with maps. When our map is properly lined up with familiar objects on the ground and the cardinal points of direction, by which we can find our position on the map, we are "oriented". We have everything in the right perspective, and by glancing at our map, we can correctly tell where we came from, where we are, and what lies ahead.

In terms of the present discussion, orientation is the process of helping us to find out where we stand, who our friends are, who our enemies are, what must be done to deal effectively with our post-war problems, and why. It tries to offer us facts and knowledge which will help us meet new situations with maximum effectiveness, whether we run into new situations on the battlefield; in an isolated station, in a routine Army job, or after returning to civilian life. Orientation tries to help us "know the score".

Orientation must be a continuing process. Just as we constantly orient our map while traveling, so must we constantly line up the facts so that we'll always know where

we stand on events that affect us. The catch is that all armies claim to keep their men oriented. Obviously, some [fol. 322] one is lying, since the real facts cannot support

AN "ORIENTED" GERMAN

(Letter written by Gottfried Lesko, German pilot)

"Maybe you are American. One boy of my crew would have said that you are infected with the bacillus of democracy. I think everything you write about democracy is just phrases. What is liberty, anyhow? I for one have always found that it is much easier if someone tells you what to do. The point is, where would we be if everybody in the world were to make his own life? We don't know what's good for us. I don't only mean that it's better for the whole nation when one man decides. It's also better for each of us. It's easier to do a job if you are told what to do than to figure it out for yourself."

both sides of a conflict. Let's look at some typical German and Japanese "orientation" methods.

2 plus 2 = 6

(Question: Why doesn't the Axis tell its soldiers the complete truth?)

Goebbels, the German propaganda chief, once boasted that "we have made the Reich by propaganda". Japanese domestic broadcasts state "those who are born in Japan are born of God". The Axis soldier^o have been thoroughly indoctrinated along "master race" lines, and from that false starting point the enemy's "orientation"^o programs "take off".

Today we have captured a sufficient number of prisoners and documents to see what that means. The severe defeat suffered by the Japanese Navy in October was dished out to the Japanese troops as a great victory.

German prisoners captured last July in Italy knew nothing about the then current Russian offensive. Japanese taken prisoners in the Pacific thought they were fighting in California and Texas. German prisoners brought to this country insist that New York City has been leveled to the ground. By radio, newspapers and formal lectures, Germany and Japan have tried to maintain in their troops the

illusion of approaching victory. Both facts and opinion have been ruthlessly suppressed to keep the Axis soldiers from knowing the real score.

Illusions Versus Truth

The chief difference between the orientation of our Army and that of Axis forces arises from the difference between democracy and fascism. The Axis, having created their aggressor states by selling lies, cannot suddenly change to telling the truth.

We have no such problem. Our government never told us we were created to rule the world. The policy of our Army (War Department pamphlet 20-3) declares that "the fundamental principle of American information about the war is that we will speak the truth . . . there is never any justification, in any circumstance, for the employment of material which is known to be false".

Contrast this with Hitler's avowed policy set forth in *Mein Kampf*: "A definite factor in getting a lie believed is the size of the lie. The broad mass of the people, in the simplicity of their hearts, more easily fall victims to a big lie than a small one."

With this in mind, German political officers have told their troops that the allies intend to marry all German women to members of the occupying troops, while the Japanese blithely continue to inform their men that the American Navy has been "annihilated"—by now for the fourth time!

While the Axis feeds its men illusions, our Army has been steadily giving us facts, encouraging us to understand the essentials of why we're here and what lies ahead.

Why Orientation?

(Question: Does it help a man to be a better soldier if he understands the score?)

The most important belief we can have is a sound faith in democracy, built on a conviction that every individual has certain rights that must be respected. These are basic concepts of decent human existence which our orientation program helps us to understand.

During a war we are all under special strain. We were

scorned by the Axis as "decadent" in our refusal to believe that the individual exists only for the State. Some of us were irritated at the delays made necessary by our democratic procedure. Once in the Army, we temporarily had to give up our individuality to work as a disciplined team toward the big goal. (We learned, for example, not to talk back in an Army that fights to preserve freedom of speech for America.) It would be comparatively easy for our thinking to become muddled during a period of military reverses and prolonged personal hardships. Only by knowing the score can we keep events in their true perspective. There are six basic orientation objectives.

Six Orientation Objectives

1. *Why We Fight*

On 7 December 1941 we knew we had been attacked but we were troubled over *why* we had been attacked. In a [161, 323] democracy like ours it is not enough to fight the enemy merely because we've been ordered to. Our fighting has a purpose, and the better we understand that purpose the quicker we'll fight the war through to a successful end.

The reasons why we fight are becoming increasingly important as our offensives against Germany and Japan drive toward our ultimate objectives. By understanding these reasons we can understand the necessity for *complete* defeat of Germany, and *complete* defeat of Japan. Through orientation we get a true view of events and can figure out where we fit in the big picture.

2. *Know Your Enemies*

It's common sense to learn to size up your opponent. The more each of us knows about the enemy's tactics, tricks, mentalities, beliefs, armament and training the easier we'll be able to overcome him. Only by knowing our enemy can we take advantage of his weaknesses and counter his strong points. This is just as true for the buck private as for the G-2 of the General Staff.

We always made it a point to know all we could about our opponent in a sports contest. Army orientation tries to give us the same sort of advance information, but with one difference. A game has rules and ends with the referee's

whistle. In combat there are no rules, and we fight until the other guy's knocked out. The more each of us knows about our opponent the better able we'll be to beat him.

3. Know Your Allies

We're far from alone in the war against the Axis. Nearly all the civilized nations, including some a lot of us never heard of before, are with us in fighting Germany and Japan. Some, like the Soviet Union and Great Britain, have suffered far more than we have. Without them on our side we would be far from the victory toward which we're moving in Europe and we would not have come as far as we have in the Pacific.

Knowing these allies of ours serves a two-fold purpose. Since thousands of us work side by side with them, we gain efficiency and closer cooperation by a sympathetic understanding of their problems and national characteristics. In the post-war years, we must continue this close cooperation if we are to hope for a lasting peace.

4. News—Its Significance

Knowing the news and its significance permits us to know what the score *really* is and not what some enemy spell-binder would like to have us guess it is.

Our Army wants the American soldier to be the best informed soldier in the world not because of the volume of information available to us but because of the accuracy of the information that we do get.

American troops are not led to believe they are fighting in Berlin when they're fighting in Aachen. We are not led

JAPANESE ORIENTATION

(Japanese "instructions for those who are in the battle lines".)

"Rectify your mind, cultivate your body and believe in the divine spirit of the emperor—with the protection of the divine spirit you are ashamed of nothing. These are the instructions from the divine spirit. In the fighting lines you must remember the will of your parents and the great principles of loyalty and do what your great-ancestors had expected of you. All those of you who are in the Armed Forces must remember these words and must perfect your duty as soldiers so that you will swim in the bathtub of his imperial grace."

to believe we are attacking the Japanese homeland when we invade the Philippines. We know where we stand in the war, because we get the straight news, *good or bad*. We don't get Axis-style fairy stories.

Our individual appraisal of the news calls for clear, level-headed thinking. We know that we have Germany on the brink of defeat but we must remember that we still have plenty of hard fighting to do. We must realize that we must next concentrate all our energy on Japan and be prepared for the possibility of a long fight. Knowing the news and the meaning behind it is our best way of knowing the score—right up to date.

5. *Pride In Outfit*

The soldier who thinks the whole Army is *suifu*, and his outfit is no good, and its mission is useless, and his job is unimportant—is very likely to be unhappy and unable to do his best job. The fostering of pride in outfit is a responsibility of all echelons of command.

Army orientation, generally speaking, can assist the unit commander in fairly broad terms, pointing up the over-all efficiency of the Army itself, the importance of each of the various arms and services and the over-all success which has been achieved. It is up to the leaders of units, locally, to help the men see the link between the job of the outfit and the big successful operation. Without this, Army orientation is likely to fail. It must be supplemented within the local command if the total job is to be done.

6. *Faith In America*

Faith in the United States and its future is not just a high-sounding phrase. It's the faith that makes this entire war worth fighting for, primarily it's a belief in ourselves and our people back home.

Our Army orientation does not attempt to impose on us a [fol. 324] blind faith which closes our eyes to faults such as unemployment, poverty, race riots and other unsolved problems. None of us is fighting to preserve those ugly marks.

on our record. We're fighting to keep the good things in America for ourselves and to change the bad things as we see fit—without the assistance of a gauleiter (Gow-Liter) from outside.

Once Germany and Japan are licked, we'll come home to problems aggravated by the war. Millions of men will be demobilized just as quickly as the services can spare them and provide the necessary transportation facilities. When that happens, we'll have to readjust our personal lives to civilian status. As citizens we must be prepared to participate in supporting plans for assuring world peace and returning America to peacetime prosperity.

Our problems will be many, and complex. Not all of them can be solved overnight. Our Army orientation cannot solve these problems for us, but can only help us understand the nature of the issues that we'll confront.

Our Army Program

The basis of our orientation program is the distribution of straight information from which we can interpret events. This is done in various ways.

Nearly all of us are familiar with the Army's "Why We Fight" films. Through these and other movies we have been given sharp, authentic pictures of many of the issues at stake. We have become better acquainted with our allies. We have learned about our enemies.

Wherever American troops are stationed, and whenever battle conditions permit, a brief, oral weekly summary of the news is required by WD Circular 360, which has set aside one undivided hour per week for the sole purpose of orientation. The remainder of the time is devoted to a discussion of the news or some special topic of general interest.

Many of these discussion topics are based upon an Army orientation guide known as ARMY TALK prepared by officers and enlisted men with extensive service in the U. S. A. and overseas. This publication, available to discussion leaders, carefully analyzes specific subjects and gathers the facts in the case. Unpleasant truths are presented as well as the favorable, so that the soldier can grasp an issue in its

entirety. Armed with these facts, a group leader conducts a discussion among his men who are encouraged to express

THE QUESTION BOX

1. Does the Army need to orient its men?
2. Do the men need it?
3. Does orientation help us as fighters?
4. Will it help us as citizens?
 - a. To get a job and make a place for ourselves in the community?
 - b. To join effectively in public decisions?
5. Is it just a lot of propaganda?
6. Does the Army try to get information to us?
7. What methods does the Army use to help us understand the issues?
8. Does the Axis deliberately misinform its men?

their own views. In this manner, doubts and misconceptions are cleared up by frank, open discussion.

Fighting With Our Eyes Open

Our method of gaining an understanding of the cause, progress, and effects of this war is probably more painful to us than the Axis system of propagandizing their troops. We have been aware of our defeats as well as our victories. We don't glorify war; we recognize it as something rotten and filthy as well as grimly necessary. We realize that to win the last battle will not automatically solve all our future problems.

But we have not been sold a bill of goods about our invincible armies that "never, never have retreated"; we have not been told that war is beautiful and a soldier's heaven awaits us if we die in battle; we have not been put on pedestals to lord it over the rest of our fellow-men, and promised Utopia once the war is won. These are illusions the Axis feeds its men.

Our orientation program is founded upon simple truths to which all of us can testify. We believe in democracy and at the same time recognize faults in its operation. We believe we have certain inalienable rights as individuals, even though as soldiers we obey orders and have tempo-

286c

rarily given up some of those rights in order to assure their performance in the future.

Army orientation simply tries to strengthen these beliefs by helping us to understand the score.

Next Week: GUERRILLA FIGHTERS—MOSTLY ON OUR SIDE

[Restricted]

Prepared by Army Orientation Branch, Information and Education
Division, ASF [A.G. 353 (16 Jan. 44).]

[fol. 325]

APPLICANT'S EXHIBIT "D"

National Jewish Monthly, July-August, 1944

WHY I AM IN THIS FIGHT

A July 4 Statement By a Jewish Fighter For Freedom

By Lt. Raphael Konigsberg

Raphael Konigsberg is a first lieutenant in the Medical Administration Corps of the U.S. Army. His home is Los Angeles, where his wife and baby daughter live and where he was a social worker for ten years at the Los Angeles Sanatorium. He has just gone overseas. His three brothers are also in the armed forces overseas, one as an Air Transport Command pilot in India, one as a bomber pilot in Italy, and the third as an artillery gunner in the Canadian Army in England.—*Editor.*

July-August, 1944.

EVERY person in uniform asks himself at some time: Why am I in this fight? What is my stake as an individual in this total war? And sooner or later each one of us must give himself an answer.

It is not enough to say: "Hell, I was drafted," or even, "I enlisted." While it may be that the soldier who enlisted has a clearer, more positive reason for being in the Army, nevertheless the draftee can also find deeply personal and satisfying reasons for being in uniform—if he understands that in a democracy it is the people (of whom he is one) who draft themselves to serve their country in its hour of peril.

In answering this question for myself I find that the simplest, most accurate reply is: I am in the army because I am selfish.

I want and need certain things which I know I will never have unless the United Nations win this war; things which I know I could never enjoy (even if they had been won and made available to me) unless I did my share in securing them for my side.

I want economic security for my family and myself. A minimum of economic security is the basis of everything else; hungry, desperate men cannot be good parents, good neighbors or good citizens; they cannot enjoy life or contribute to it.

I want also to feel free to follow certain professional and cultural interests. I know that if Fascism wins, all this will

be impossible. So I must help defeat Fascism. I know I cannot do this alone. (I have never been seduced by that diseased shibboleth "individualism"—which has retarded our national growth for generations.)

I want to live like a man, not like a slave; to live in dignity while striving for the realization of the promises of manhood and civilization. I cannot expect others to fight and die for this liberty and hand it to me.

I want the United States of America to be a mighty democratic nation. Only such a land can guarantee to me and mine the things we hold indispensable to a useful, honorable life. I am a Jew.

I know that democracy can be lost, and how it can be lost. I have learned that if Fascism comes here I myself will be to blame—if I have not done everything in my power to prevent it. If I do the best I can now, I will not have to reproach myself later, win or lose. I feel personally responsible for my country's fate. I want to help shape America's future.

I want to be a good citizen. I happen to believe that man does not live for himself alone, that the rewards which really count in life come not from material gain and personal power, but from service to the community. The field of service I have picked for myself is that of good government.

A good citizen believes that his government has the right to ask a price of him for the privilege of citizenship—such as fighting for it when it is in danger—and he is eager to pay that price.

I want recognition—the kind accorded a good neighbor and a good citizen for carrying his share of the load. This is for me a basic psychological need. In one way or another we all want to be appreciated, to feel useful. For we all recognize—whether we admit it to ourselves or not—that life must mean something more than eating, bickering, dying, that it must be for some more honorable purpose than beating the other guy in a deal and showing up the Joneses.

Human beings must fill this void in their lives, this deep hunger for an assurance of worthiness. Some do it with charitable work; some by joining clubs; some by losing

themselves in a hobby; some give way to heavy drinking; some are very fortunate in finding all their satisfactions in their chosen life's work.

My profession is social work, the furthering of human welfare, which ultimately means insuring good government — and which now means crushing Fascism, fighting to build such an enriching socially-constructive way of life in our country that this void will not exist in the hearts and minds and souls of Americans, of people of good will throughout the world.

The fact that the United Nations are now making a full-time job of my chosen work is to me the vindication of my whole life.

[fol. 326]

Applicant's Exhibit "E"

The State Bar of California
 Committee of Bar Examiners
 Southern Subcommittee
 Los Angeles

In the Matter of the Application of Raphael Konigsberg.
 List of Persons Testifying to the Character of Raphael Konigsberg.

Attorneys:

Paul Major, 109 W. 7th St., San Pedro.

Herbert W. Simmons, Jr., 315 W. Vernon Ave., Los Angeles.

Mortimer Vogel, 1250 Wilshire Blvd., Los Angeles.

Businessmen:

Albert C. Bricker, President, Schneider & Bricker, 2324 W. 8th St., Los Angeles.

Aaron Fefferman, Treasurer, Beckman, Hamilton, Inc., 365 S. Fairfax Ave., Los Angeles.

H. Claude Hudson, President, Broadway Federal Savings, 4329 S. Broadway, Los Angeles.

David Melinkoff, Retired, 3783 Effingham Pl., Los Angeles.

Harry Rorick, Ray T. Ebert Co., 922 N. Formosa Ave., Los Angeles.

Max Schechter, President, Plyline Mfg. Co., 5525 McKinley Ave., Los Angeles.

George Stiller, President, Stiller-Rouse, 6399 Wilshire Blvd., Los Angeles.

James L. Tuma, Sec'y-Treas., US Geophysical Corp., 6912 Hollywood Blvd., Los Angeles.

[fol. 327] Nat Zausner, President, Portion Foods, Inc., 200 S. Lake St., Los Angeles.

Doctors:

Diego Bermudez, M.D., 132 N. Soto St., Los Angeles.

H. I. Lee, M.D., 6333 Wilshire Blvd., Los Angeles.

A. E. T. Rogers, 1665 Irvine Ave., Costa Mesa.

Ministry:

Rabbi Jehudah M. Cohen, 900 Hilgard Ave., Los Angeles.

Rt. Rev. Msgr. T. J. O'Dwyer, 1531 W. 9th St., Los Angeles.

Samuel Tierman, Asst. Secy., Wilshire Blvd. Temple, 636 S. Hobart Blvd., Los Angeles.

Professors:

Ronald F. Brown, Chairman, Dept. of Chemistry, Univ. of S. Calif., Los Angeles.

Pendleton Howard, School of Law, USC, Los Angeles.

Victor S. Netterville, School of Law, USC, Los Angeles.

Social Workers:

Chauncey A. Alexander, Exec. Dir., S. Cal. Society Mental Hygiene, 3067 W. 7th St., Los Angeles.

Nonette Batavia, 9800 Vidor Dr., Los Angeles.

Joseph Esquith, Field Dir., Jewish Centers Assn., 590 N. Vermont Ave., Los Angeles.

Harry I. Freedman, Asst. Dist. Supt., State Dept. of Educ., Bureau of Voc. Rehab., Los Angeles.

Zebulon L. Gullledge, State Dept. of Educ., Bureau of Voc. Rehab., Los Angeles.

Helen Hackett, Asst. Exec. Secy., Welfare Council of L. A., 729 S. Figueroa St., Los Angeles.

Esther Nasatir, Act'g Dir., Mt. Sinai Clinic, 207 N. Breed St., Los Angeles.

Jeanne G. Young, Dir. Med. S.S., Cedars of Lebanon Hosp., 4833 Fountain Ave., Los Angeles.

[fol. 328]

Other Professional:

Morris Browda, Assoc. Editor, Calif. Jewish Voice, 406 S. Main St., Los Angeles.

Gerald Kraemer, Reg. Pharm'st., 1411 $\frac{1}{2}$ Pointview St., Los Angeles.

Nathan Paul Chief Techn'n, City of Hope, Duarte, Cal.

Other Persons:

Mrs. Louis H. Waldeck, 6410 Lindenhurst Ave., Los Angeles. (Was member of executive board of Citizens Committee for Better Education which sponsored Konigsberg's candidacy for L.A. School Board election in 1947.)

Mrs. Jean Sieroty, 1002 N. Rexford Dr., Beverly Hills.

Mrs. Thomas E. Workman, 678 Lorraine Blvd., Los Angeles.

NOTE: Included also are letters from five social workers and an attorney (from among the many) written on Konigsberg's behalf when he was dismissed from his post with the State Relief Administration in 1939. They are offered here because they are the opinions of leading persons in the community at the time, with whom Konigsberg was closely associated, when his character was in issue.

C. Gardner Bullis, Attorney, 605 W. Olympic Blvd., Los Angeles.

Mathew P. Adams, Exec. Secy., Children's Home Soc., Pasadena.

Harry F. Henderson, Former Exec. Secy., YMCA, Los Angeles.

Ernestine Lewin, L. A. County Probation Dept., Los Angeles.

Mary Stanton, Exec. Secy., Council of Social Agencies, Los Angeles.

Dorothy Wysor Smith, Exec. Secy., Travelers Aid Soc., Los Angeles.

[Vol. 329]

MAJOR & MAJOR

Attorneys at Law

109 West Seventh Street

San Pedro, California

TErminAl 2-1121

Paul Major

Sam Major

January 6, 1974

To the Committee of Bar Examiners:

I have known Mr. Raphael Koenigsberg for about six years, both prior to and after his connection with the tuberculosis sanatorium at Duarte, and throughout the time that he was studying law preparing himself for the bar examination.

My recommendation here is not lightly given. For four years I taught law at the Pacific Coast University and gave a quiz course on three different occasions. I have had many students consult me about personal problems in connection with their applications for taking the California bar examination. As a consequence, I feel that I am not without some experience in judging the characters and abilities of bar applicants in general.

I recommend Mr. Koenigsberg unreservedly as a person of high moral principle and character. He has an excellent reputation and should be a great credit to the bar. He is a much more profound person than the average bar applicant and exhibits a social consciousness which, in my opinion, is unfortunately too rare among applicants.

I fully expect that he will have no difficulty making a passing grade.

Sincerely,

Paul Major

PM:dh

(61-330) HERBERT W. SIMMONS, JR.

Attorney and Counselor at Law

315 West Vernon Avenue

Los Angeles 37

ADams 7213

December 18, 1953

Committee of Bar Examiners
Los Angeles, California

Re: Raphael L. Koénigsberg

Gentlemen:

I have known the above named person for a period of approximately four years. My acquaintance with him has been both on a business and social basis.

During my acquaintance with him, I have had many opportunities to observe his personality and character.

I can say, without any mental reservation, that he has all the characteristics which I personally think are necessary to a good law practitioner. I find his intelligence, honesty and integrity to be of the highest calibre.

If I can be of any further assistance to you in this matter, please don't hesitate to contact me.

Respectfully yours,

Herbert W. Simmons, Jr.

HWS:dp

[fol. 331]

MORTIMER VOGEL

Attorney at Law

1250 Wilshire Boulevard—Suite 601

Los Angeles 17, California

Michigan 3655

Dec. 28, 1953

Committee of Bar Examiners
440 Rowan Building
458 South Spring Street
Los Angeles, California

Gentlemen:

At the request of Raphael Konigsberg, I am writing this letter. I have known Mr. Konigsberg for several years and have met both his wife and children. I have always found him of the highest moral character. I know that he is sincere, trustworthy and righteous. There is no question or doubt in my mind that he is of good moral character, and has the characteristics necessary to measure up to the highest standards of any member of the California Bar.

If there is any additional information that you may desire, I shall be happy to try to furnish same.

Very truly yours,

Mortimer Vogel

MV/KK

[for 332]

**BECKMAN, HAMILTON &
ASSOCIATES, INC.**

Advertising

365 South Fairfax

Los Angeles 36, California

Webster 0106

December 16, 1953

Committee of Bar Examiners
Los Angeles, California

Dear Sir:

I have known Raphael Kohnsberg for approximately fifteen years, both socially and in business dealings. He has at all times conducted himself ethically and I would consider him to be especially suited to the practice of law. He is a good family man and has no bad habits of which I am aware.

Very truly yours,

Aaron Fefferman,
Treasurer,
Beckman, Hamilton &
Associates, Inc.

AF ks

[fol. 333]

SCHNEIDER & BRICKER

Insurance

2324 West Eighth Street

Los Angeles 5, California

DUnkirk 2-7331

December 15, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

Mr. Raphael Konigsberg has asked me to write you with regard to my opinion of his character and ability, and I am pleased to have this opportunity to do so.

I have known Mr. Konigsberg for approximately eight years as a man of integrity and of the highest moral character, concerning which, to my knowledge, there has never been any question. Throughout the years I have known Mr. Konigsberg he has impressed me as an unusually intelligent and capable person eminently suited for practice in the legal profession.

I trust this is the information you require and that you will not hesitate to let me know if I can be of further assistance to you in this matter.

Very truly yours,

Schneider & Bricker
Albert C. Bricker

ACB:sa

[60-334] BROADWAY FEDERAL SAVINGS AND
LOAN ASSOCIATION OF LOS ANGELES

4329 South Broadway

Los Angeles 37, California

ADams 3-7246

H. Claude Hudson, President

Zella M. Taylor, Secretary

December 18, 1953

Committee of Bar Examiners

c. Edward Mosk

6305 Yucca Street

Hollywood, California

Gentlemen:

About six years ago I met Mr. Konigsberg under very favorable circumstances. We were both candidates for the Los Angeles City Board of Education. During the period of the campaign I had an opportunity to learn a great deal about the ideals and aspirations of my associate candidate. Over a period of six months our discussions and exchange of opinions were most cordial and intimate. In his public statements and private remarks to me I had an opportunity to observe him. During this period of time I never heard him make a statement that would make me feel that he was not a man of strong character and a believer of democracy and the American idea.

I have occasionally visited his home since the campaign and I am convinced that he is morally fit for the practice of law and an American who is desirous of social progress. I consider it a privilege to address this communication to you.

Sincerely yours,

H. Claude Hudson, D.D.S., LL.B.

HCH:jj

[fol. 335]

December 15, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I appreciate the opportunity of writing to you at the request of Raphael Koenigsberg.

My first acquaintance with him goes back to about 1929. Although first impressions are not always infallible, in this case I venture to say my initial judgment still stands.

During the last two decades, Mr. Koenigsberg has been a frequent visitor at our home. I have had occasion to see and hear his reactions under various circumstances. Emotionally, as well as intellectually, he is well balanced, level headed, and possesses a boundless reserve of integrity. These characteristics, in my humble opinion, are indispensable in a person planning to practice in the legal profession.

Hoping you will give favorable consideration to Mr. Koenigsberg, I am

Very truly yours,

David Melinkoff

[fol. 336] COST-CUTTING PACKAGING

With Jiffy Padded Shipping Bags, Pads, Sleeves

RAY T. EBERT COMPANY

922 North Formosa Avenue

Los Angeles 46, California

Hollywood 3-5684

December 14, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I have known Mr. Raphael Konigsberg for the past ten years and can recommend him without reservation as being a highly honest, reliable and ethical person.

I think that he would make an excellent lawyer and undoubtedly will contribute a great deal to the profession.

If I may be of any further assistance, I will appreciate your calling me.

Sincerely yours,

Harry Rorick

HR/jj

cc: Edward Mosk

Raphael Konigsberg

[fol. 337] PLYLINE MANUFACTURING COMPANY

December 24, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I have known Raphael Konigsberg for the past ten years, and would vouch for his character and citizenship.

I know him as a responsible family man, and as a person who has taken a keen interest in civic affairs that affect our community. His integrity, his genuine in-

terest in people, and his active participation in community affairs, are all attributes which I feel would make him an outstanding attorney and a credit to the legal profession.

Very truly yours,

Max Schechter

MS:RA

[fol. 338] CITY OF HOPE MEDICAL CENTER

Duarte, California

Department of Laboratories

December 15, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I have known Raphael Konigsberg since November 1946 when I entered employment in the Clinical Laboratory of the City of Hope. I have found him sincere, responsible, and extremely honest. He has given himself full heartedly to every project he has undertaken and to any individual who came for advice or help.

His character is excellent and I believe he would make an excellent lawyer.

As Director of Social Service at the City of Hope he was not only interested in the patients' problems but also anxious to see that the other facets of life such as cultural and religious were attended to.

[fol. 339] He has shown a strong interest in Community affairs such as Community Centers, Nursery Schools, and the Public School System.

I am a Clinical Laboratory Technologist employed at the City of Hope in the Clinical Laboratory as Chief Technician since 1946. I have lived in the Los Angeles area since 1923, except for my three years (1936-39) at the University of California at Berkeley and my five years in the army of the United States (1941-1946).

Since Mr. Konigsberg and I both lived in Los Angeles and worked in Duarte, we pooled our cars during 1946-1948 and hence saw each other daily. After I moved to Sierra Madre (1948) and Arcadia (1950) we saw each other frequently whenever I was in Los Angeles.

Trusting this information will be of value to you.

Sincerely,

Nathan Paul

[Vol. 340]

PORTION FOODS INC.

200 South Lake Street

Los Angeles 4, California

DUnkirk 3-0993

December 15, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I consider it a privilege to be able to state my opinion about my friend Mr. Raphael Konigsberg.

Throughout the years of our friendship I have developed a high regard for his high principles, moral integrity and great ability. I should especially call your attention to his unselfish interest in civic affairs toward the improvement of the under-privileged groups in our community.

It is my considered opinion that Mr. Konigsberg will make an excellent attorney and will be a credit to the profession of law.

Very truly yours,

Portion Foods Inc.
Nat Zausner,
President.

NZ:m

[fol. 341]

SCHNEIDER & BRICKER

Insurance

2324 West Eighth Street

Los Angeles 5, California

DUnkirk 2-7331

Decem'

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

Mr. Raphael Konigsberg has
regard to my opinion of him
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ation you require and that you
me know if I can be of further
this matter.

Very truly yours,

Schneider & Bricker
Albert C. Bricker

[fol. 342] STILLER-ROUSE & ASSOCIATES

Advertising and Public Relations

6399 Wilshire Blvd.

Los Angeles 48, Calif.

WEbster 3-5961.

December 15, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I have been personally acquainted with Mr. Raphael Konigsberg for over ten years, having met and worked with him prior to his Army service during the war and also after his return to Los Angeles from overseas service.

It is my firm and sincere conviction that he would be a worthy addition to the legal profession because of his wide educational background, his integrity and his high character.

Coupled with these valued attributes is another I deem essential in an attorney—a warm and human personality, deeply interested in people, as people, and in helping solve their problems.

As indicated by the above letterhead, I am a partner in the firm of Stiller-Rouse and Associates, a general advertising agency.

Respectfully submitted,

George Stiller

GS:sk

[fol. 343] U.S. GEOPHYSICAL CORPORATION

Verified Seismic Survey

Airborne Geophysics

6912 Hollywood Boulevard

Hollywood 28, California

HO. 9-5415

December 31, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

This letter refers to the character of Mr. Raphael Konigsberg. I met Mr. Konigsberg in July 1949 at the City of Hope Sanitarium at Duarte, California where I was engaged in a survey of the personnel and administration of the Institution, to improve personnel relations and reduce costs.

It was necessary for me to become intimately acquainted with the executive and department heads, and evaluate their ability, performance and value to the institution.

Mr. Konigsberg was at that time Director of Service and Rehabilitation. The departments directed by him were of vital importance in administering the needs of the patients from the date of entry to the date of discharge. It required a great deal of humanitarian understanding and guidance to keep the patients contented, so vitally necessary to the recovery from tuberculosis.

I was in close contact with him for a period of six months and know that he has a very fine character, good judgment, and a trained mind for detail and research. I am satisfied that he is fully qualified to become a good and successful lawyer.

For the last fifteen years I have been a Business Consultant and Management Engineer specializing in administration, organization, personnel relations, costs, systems, etc.

At present I am Secretary and Treasurer of the U. S.

Geophysical Corporation, specializing in the location of oil and uranium resources in the United States, Canada and Mexico.

Yours very truly,

James L. Tuma

[fol. 344]

PORTION FOODS INC.

200 South Lake Street

Los Angeles 4, California

DUnkirk 3-0993

Dec. 15, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I consider it a privilege
about my friend Mr.

Throughout the
oped a high regard
and great ability
to his sense of
improvement
community

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is

OMIT DUPLICATION

in my opinion

ship I have developed
principles, moral integrity
I shall call your attention
to the affairs toward the im-
privileged groups in our com-
munity

in my opinion that Mr. Konigsberg will
journey and will be a credit to the pro-

Very truly yours,

Portion Foods Inc.
Nat Zausner,
President.

[fol. 345]

DIEGO BERMUDEZ, M. D.

132 North Soto Street

Los Angeles 33, California

Angelus 5983

December 14, 1953

Committee of Bar Examiners

Los Angeles, California

To whom it may concern:

Re: Mr. Raphael Konigsberg

This is to certify that I have known the above mentioned person since 1947. Mr. Konigsberg and I worked together at the City of Hope, Duarte, California where Mr. Konigsberg was director of the Social Service Department.

I am pleased to state that I believe Mr. Konigsberg is a person of high moral quality and, to the best of my knowledge, Mr. Konigsberg will be an asset to the legal profession as a practicing lawyer.

Very truly yours,

Diego Bermudez, M. D.

DB:bb

[fol. 346]

H. I. LEE, M. D.

6333 Wilshire Boulevard

Los Angeles 48, California

Webster 1-4455

December 12, 1953

Committee of Bar Examiners

State of California

Los Angeles, California

Dear Sirs:

Mr. Raphael Koenigsberg has been known to me for the past 12 years, when we were both associated with the City of Hope Tuberculosis Sanatorium in Duarte, Cal-

formia. At that time Mr. Koenigsberg held an administrative position as manager of the Sanatorium and in my capacity as the Assistant Medical Director I had occasion to become well acquainted with his ability and character.

In my opinion I have found his moral and ethical standards to be of the highest caliber. He possesses qualities of sound judgment and great initiative. Mr. Koenigsberg has impressed me as a man representing the finest ideals of Americanism and without qualification I approve his fitness for the practice of law.

Very truly yours,

H. I. Lee, M.D.

HIL:lk

[fol. 347] Committee of Bar Examiners

Los Angeles
California

Gentlemen:

This information is being forwarded for your consideration relative to Mr. Raphael Konigsberg, at his request.

I have known Mr. Konigsberg for approximately eight years, during which I was Assistant Medical Director, then Medical Director of the City of Hope Hospital, Duarte, California. Mr. Konigsberg served in the Social Service Department of that institution and under my supervision. Since I am no longer connected with the hospital and its personnel records are not available to me, I cannot supply you with the specific dates of his employment, but can say that the association extended over several years. During this period, he performed his duties diligently and conscientiously, and insofar as my knowledge goes, displayed satisfactory ethics and moral character. His eventual separation from this position came about as a result of an irreconcilable difference of opinion with the hospital's Board of Directors.

I trust that this information will be of assistance to you.

Very truly yours,

Arthur E. T. Rogers, M.D.

1665 Irvine Avenue
Costa Mesa, California

December 22, 1953.

[fol. 348] B'NAI BRITH HILLEL FOUNDATIONS
AT AMERICAN UNIVERSITIES

December 23, 1953

Committee of Bar Examiners
Los Angeles, California

Dear Sirs:

I am very happy to provide a character reference on behalf of Mr. Raphael Koenigsberg who has recently taken the State Bar Examinations. Mr. Koenigsberg has been known to me during the past fifteen to seventeen years, particularly during the period when he served in a number of executive capacities in the field of social work. During my acquaintance with him, I have always regarded Mr. Koenigsberg as a person of exemplary character, genuine honesty and integrity, and thorough reliability. I have been impressed by his intellectual capacity and achievements, his genial and outgoing personality, and the splendid atmosphere which prevails in his home and in his filial relationships.

I unreservedly recommend Mr. Koenigsberg as a person who is morally and ethically qualified to serve as a member of the Board.

Sincerely yours,

Rabbi Jehudah M. Cohen
Pacific Regional Director

JMC:as

[fol-349]

DEPARTMENT OF HEALTH
AND HOSPITALS

Archdiocese of Los Angeles

1531 West Ninth Street

Los Angeles 15, California.

December 14, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I am writing you on behalf of RAPHAEL KONIGSBERG, now residing at 2446 Echo Park Avenue, Los Angeles.

I wish to advise that I was well acquainted with him between the years 1936 and 1940. During that period he was employed as a member of the staff of the Council of Social Agencies in Los Angeles. He enjoyed an excellent reputation among all who were acquainted with him during those years.

Mr. Konigsberg resigned his position with the above-mentioned Council of Social Agencies and accepted an assignment with the newly-established State Relief Administration. Later he joined the armed forces and I assume he will present to you references from persons who knew him in the succeeding years.

I do not hesitate to recommend him to you. I am satisfied that he will measure up to the high requirements established for members of the legal profession.

Sincerely yours,

(Rt. Rev. Msgr.) Thomas J. O'Dwyer

TJOD:S

[Vol. 350] WILSHIRE BOULEVARD TEMPLE

Congregation B'nai B'rith

Wilshire and Hobart Boulevards

Los Angeles 5, California

December 16, 1953

"RELIGION—Our most constructive defense"

Committee of Bar Examiners.

Los Angeles, California.

Gentlemen:

This letter is written in response to a recent request from Mr. Raphael Konigsberg to furnish your Committee with my appraisal of his character and qualifications.

I met Mr. Konigsberg more than 15 years ago at a time when he was being considered as Director of Social Welfare for the Jewish Consumptive Relief Association. As a result of the impression made upon our Committee he was engaged and served most capably in this capacity for a number of years, until the outbreak of World War II, when he was granted leave to enlist in the United States Army. It is my information he acquitted himself creditably while with the armed forces, and following his discharge was reengaged as a social worker by the Association. My tenure as Trustee of the above mentioned institution terminated about 1948, as well as my contact with Mr. Konigsberg.

From my personal knowledge I would recommend this gentleman to you for consideration in granting him all privileges should he pass, believing he is of the caliber required to make an excellent lawyer who will serve his clientele conscientiously as well as in the observance of the ethical standards of the Bar.

Yours very truly,

Samuel Tierman

ST/fg

[Vol. 351] UNIVERSITY OF SOUTHERN
CALIFORNIA

3518 University Avenue

Los Angeles 7

Committee of Bar Examiner

December 22, 1953

Los Angeles, California

Gentlemen:

Mr. Raphael Konigsberg has asked me to write you concerning my opinion of his character and whether I think he would make a good lawyer. I am in no way qualified to give an opinion as to whether a given person would make a good lawyer or not. It is completely outside my field of interest.

I have known Mr. Konigsberg since 1946 when I made his acquaintance while I was a patient at the City of Hope and he returned to his position as Director of Social Service there. He was very enthusiastic, able and capable in his position and his ultimate discharge, in my opinion, was not in best interests of the City of Hope. Nevertheless, that event led him to reconsider his career in social service and to decide to enter upon the study of law.

Mr. Konigsberg is definitely a liberal and presumably with his law training would be particularly fitted for work on any legal questions involving organized charities and the welfare organizations, or perhaps labor relations. Mr. Konigsberg also is a man of rather definite ideas and not too much inclined to compromise on what he thinks is right. He served as an officer in Germany in the last war and I personally know of nothing which would cause me to doubt his loyalty to the U.S. In short, I have the highest opinion of his character and insofar as that is decisive, I think he would make a very good lawyer.

Yours sincerely,

Ronald F. Brown, Chairman
Department of Chemistry

RFB dh

Signed by his secretary in his
absence caused by illness

[fol. 352]

PENDLETON HOWARD

Professor of Law

The University of Southern California

Los Angeles 7, California

December 17, 1953

Mr. Graham L. Sterling, Jr.

Chairman, The Committee of Bar Examiners

2007 Central Tower

San Francisco 3, California

Dear Mr. Sterling:

Mr. Raphael Konigsberg, an applicant for admission to the State Bar, has asked me to write a letter in his behalf.

My acquaintanceship and knowledge of Mr. Konigsberg are limited wholly to the time when he was a student in the School of Law of the University of Southern California, where he was a member of several of my classes. His attitude seemed to me that of a serious and sincere student of law. So far as I know, his moral character and integrity were not under question by either his fellow students or members of the faculty.

Faithfully yours,

Pendleton Howard

[Tel. 853] UNIVERSITY OF SOUTHERN
CALIFORNIA

3518 University Avenue

Los Angeles 7

School of Law

December 11, 1953

Mr. Graham Sterling, Chairman
Committee of Bar Examiners
Los Angeles, California

Gentlemen:

Mr. Raphael Konigsberg has requested that I write a letter on his behalf setting forth my impressions of him as a student at this law school. I am happy to state for you those impressions for whatever they are worth. I should make clear however that I have no knowledge which would go to the question of Mr. Konigsberg's general character, since my sole contact with him was that of teacher-student. I do not know him socially or in any capacity outside school.

Mr. Konigsberg was one of approximately twelve students in my class in Administrative Law during the spring term of 1953. In that capacity, I was able to observe his views as expressed in class and his reactions to the various problems arising in the Administrative Law field. As you will realize, Administrative Law cuts across many other areas of the law, including civil rights, property rights and other basic constitutional law problems which have a large measure of political philosophy at their base. It was my impression that Mr. Konigsberg is a man with the courage of his convictions, but not one who holds those convictions blindly or with any but the most honest motives. He seems to hold the Constitution in high esteem and is a vigorous supporter of civil rights. But it was interesting to note that despite his vigorous position, he showed a willingness to recognize the necessity from time to time of balancing the interests of the individual against the interests of society when the legislature takes action to protect society as a whole from

threatened dangers. Throughout our discussions—discussions in which there was ample opportunity to voice and advocate extreme views—Mr. Konigsberg showed a wholesome willingness to learn from others and to test the validity of his views in the competition of such discussions. He indicated to me an open-mindedness seemingly inconsistent with any calculated disregard of his duty as a loyal and conscientious citizen.

[fol. 354] Based solely then upon my contact with Mr. Konigsberg as a law student, I would have no hesitation in recommending him for admission to the bar.

Very truly yours,

Victor S. Netterville
Instructor in Law

VSN:bmc

[fol. 355]

**SOUTHERN CALIFORNIA
SOCIETY FOR MENTAL HYGIENE**

3067 West Seventh Street

Los Angeles 5, Calif.

DUnkirk 7-8259

M E M O R A N D U M

TO: Committee of Bar Examiners, Los Angeles.

FROM: Chauncey A. Alexander.

SUBJECT: Raphael Konigsberg.

I have been asked by Mr. Raphael Konigsberg to forward to you a letter of character reference. I have known Mr. Konigsberg since 1940 in his various capacities in the social work field and through his participation in the professional associations of social work. Since I have been president of the Los Angeles Chapter of the American Association for Social Workers and in leadership there for many years, I have had occasion to know of the professional interests of many people in the Los Angeles Community. In my opinion Mr. Konigsberg is

devoted to the highest of professional standards and principles and is forthright in his expression and support of them.

In all the professional contacts that I have had with him, he has demonstrated a high standard of integrity and ability. I have had periodic occasion to participate with him in health and welfare agency committees, and he has demonstrated a devotion to democratic principles and participation.

I have had no occasion to be connected with his work or professional practices and hence am not in a position to make any judgments on that score.

If there are further specifics that I can provide you, please call upon me.

Chauncey A. Alexander

[fol. 356]

9800 Vidor Drive,

Los Angeles, December 15, 1953.

Committee of Bar Examiners,
Los Angeles,
California.

Gentlemen:

It is my understanding that Mr. Raphael Konigsberg has completed the necessary requirements to practice law in California, and that you would be interested in letters of reference, to establish his fitness to do so.

I first met Mr. Konigsberg approximately fifteen years ago when we were both employed as District Directors with the State Relief Administration. As social workers and administrators, we worked closely together, and I had ample opportunity to know him both professionally and socially.

Outstanding in my evaluation of him were his personal and professional integrity, his devotion to his work, and his interest and zealously in conscientiously carrying out his responsibilities to the clients serviced by our agency.

His moral character has always been beyond reproach.

His responsibility as a family man is well established and this feeling has extended to his community.

As a psychiatric social worker, employed for many years in this community, I have no hesitancy in recommending Mr. Konigsberg for your consideration. I feel that he would bring many valuable assets into the practice of law.

Sincerely yours,

(Mrs.) Koneite Batavia
Psychiatric Social Worker

N
B
ls

[fol. 357]

December 17, 1953

Committee of Bar Examiners
440 Roman Bldg.
458 S. Spring St.
Los Angeles, California

Gentlemen:

I should like to advise that I have known Raphael Konigsberg as a social worker from 1939 until the time he left the field to study for the Bar. He is a person of high moral character, straightforward and honest in his approach to all human problems. Conscientious, alert, well-informed, and articulate, he was always a leader in local social work and respected by its practitioners.

It is my considered opinion that Mr. Konigsberg will be a very fine attorney and a credit to the profession. I wish him every success in his new field and am sure that he will make as fine a contribution as he did to the field of social work.

I shall be glad to give any additional information which you may desire regarding Mr. Konigsberg. I can be addressed at the Jewish Centers Association, 590 N. Vermont Ave., Los Angeles 4, California. My title is Field Director.

Sincerely yours,

Joseph Esquith

JE:rl

[fol 358]

State of California

DEPARTMENT OF EDUCATION

Division of Special Schools and Services

Bureau of Vocational Rehabilitation

December 28, 1953

Committee of Bar Examiners
Los Angeles, California

Dear Sirs:

RE: Raphael Konigsberg

I have known Mr. Raphael Konigsberg for over ten years, both before he entered the army during World War II and again when he resumed his position as head of the Social Service Department at the Los Angeles Sanatorium, now the City of Hope.

During my frequent contacts with Mr. Konigsberg I found him to be responsible for his statements to the patients he served and to the agencies and individuals he dealt with in their behalf. He was always sincere in his efforts to better their conditions, and in developing programs for them, showing imagination and resourcefulness. At no time during my relationship with Mr. Konigsberg have I seen evidence of anything but excellent moral character.

I sincerely believe that with his strong desire to protect the rights of his fellowman and the integrity that he has, he will make an excellent attorney.

Very truly yours,

Harry I. Friedman
Assistant District SupervisorHIF ps
cc: Raphael Konigsberg
Edward Mosk

[fol. 359]

State of California

DEPARTMENT OF EDUCATION

Division of Special Schools and Services

Bureau of Vocational Rehabilitation

December 16, 1955

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

This letter is written in the interest of Mr. Raphael
Konigsberg.

I have known Mr. Konigsberg for approximately fifteen
years, during which time he was a resident of the City
of Los Angeles with the exception of time served in the
Army during the war.

In all my associations with Mr. Konigsberg, he has
proved a person of unquestioned integrity and sincerity,
and one who has devoted considerable time and energy
to problems of community interest. His broad profes-
sional experience has, in my opinion, been excellent
preparation for the practice of law. I believe that Mr.
Konigsberg will make an eminent contribution to the
legal profession.

On the basis of Mr. Konigsberg's fundamental qualities
of character, I am happy to recommend him to you.

Respectfully,

Z. L. Gullledge

ZLG:mn

[fol. 359a]

December 15, 1953.

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

It has come to my attention that Raphael Konigsberg is planning to take the State Bar Examination, having completed his work at the law school at the University of Southern California.

I first met Mr. Konigsberg when he came to Los Angeles about 1936 or 1937 as assistant in the Research Department of the Council of Social Agencies. I have not been in touch with him for several years, as he has not been actively engaged in social work but, to the best of my knowledge, Mr. Konigsberg is of good moral character and will, I am sure, make a good attorney.

Very truly yours,

Helen Hackett

HH:dt

[fol. 360]

December 14, 1953.

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I have been asked to testify as to the moral fitness of Mr. Raphael Konigsberg with respect to the practice of law.

This is to certify that I have known Mr. Konigsberg as a fellow social worker and friend since 1935.

In my present position as Acting Director of the Mount Sinai Hospital and Clinic, I have had occasion to determine factually that he did a fine job in his capacity of head of social service of an allied agency, the City of Hope at Duarte.

Mr. Konigsberg and I were associated on various committees in connection with the American Association of

Social Workers. He commanded the respect of his fellow professional workers not only because of his effectiveness in the field generally and his leadership qualities but mostly because of his devotion to the cause of helping the underprivileged.

The community will be well served to have Mr. Konigsberg admitted to the practice of law. It gives me great please to write in his behalf.

Sincerely yours,

(Mrs.) Esther Nasatir,
2954½ N. Hyperion Avenue,
Los Angeles, 27, Calif.

[fol. 361] CEDARS OF LEBANON HOSPITAL

4833 Fountain Ave.

Los Angeles 29, California

December 16, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I am most happy to provide you with any information which will be of help concerning Mr. Raphael Konigsberg.

I first became acquainted with Mr. Konigsberg in his capacity as Director of Social Service, City of Hope Sanitarium, Duarte, California and served as a member of his staff in the capacity of supervisor from February, 1948 through August, 1949, at which time I left in order to take my present position as Director of Social Service at Cedars of Lebanon Hospital. During the time of our association I was most impressed by Mr. Konigsberg's sincerity and integrity, both as an individual and in his professional capacity. I found him to be a person of principled conviction and willing to defend his principles even at great personal sacrifice.

I was especially impressed with his concern for the total welfare of our patients and staff.

Sincerely yours,

(Mrs.) Jeanne G. Young, RSW
Director, Medical Social Service

J6Y nhg

[fol. 362]

THE VOICE

406 South Main Street
Los Angeles 13, California

Phone Michigan 3867

Los Angeles, Calif.

Dec. 23, 1953

The Committee of Bar Examiners,
Los Angeles, Calif.

Gentlemen:

I am taking this opportunity to express to you my opinion of Mr. Raphael Konigsberg's fitness to be a lawyer because I am completely confident that he will be a valuable asset to the profession which he has chosen to follow.

In the fifteen years that I have known Mr. Konigsberg I have formed opinions of the man which make it a pleasure to tell you that he has the moral fitness and personal integrity to be a successful practicing attorney and at the same time having every characteristic which the Bar Association demands from its most successful members.

As music editor of the "Voice", my conversations with Mr. Konigsberg on cultural matters have proven to me that his broad and comprehensive knowledge of human affairs makes his future, as an attorney, one of brightness for the entire community.

Respectfully,

Morris Browda
associate editor, the "Voice"

[fol. 363]

Los Angeles, California

December 17, 1953.

Committee of Bar Examiners, Los Angeles.

Dear Sirs:

It has come to my attention, that one Raphael Konigsberg; is at present being considered for admission to the Bar for the practice of Law.

I hereby add my voice on his behalf. I have known Raphael and his family for the past 25 years, we were both students at Ohio State University and at the University of Southern California; and in my considered opinion he would be an asset to the Profession of Law.

To my knowledge he has always been kind, considerate, and understanding of people and their problems.

His admission to the Bar will contribute greatly to the already high moral standards of the legal profession.

very sincerely yours,

Gerald Kramer R.Ph.

411½ Postview St.
Los Angeles

(Copy)

6, 1956, Office of the Clerk, Supreme Court,
U. S.

HOPE MEDICAL CENTER
Harte, California

Departm.

December 15, 1953.

Committee o.
Los Angeles, C.

Gentlemen:

I have known Rapi
when I entered employ.
City of Hope. I have fo
extremely honest. He has
every project he has underta
came for advice or help.

His character is excellent and
excellent lawyer.

As Director of Social Service at th
not only interested in the patients.
anxious to see that the other facets of li
and religious were attended to.

[fol. 365] He has shown a strong interest

since November 1946
Laboratory of the
responsible; and
heartedly to
dividual who

make an

was
also

community

OMIT DUPLICATION

affairs such as community centers, nursery schools, and the Public School System.

I am a Clinical Laboratory Technologist employed at the City of Hope in the Clinical Laboratory as Chief Technician since 1946. I have lived in the Los Angeles area since 1923, except for my three years (1936-39) at the University of California at Berkeley and my five years in the army of the United States (1941-1946).

Since Mr. Konigsberg and I both lived in Los Angeles and worked in Duarte, we pooled our cars during 1946-1948 and hence saw each other daily. After I moved to Sierra Madre (1948) and Arcadia (1950) we saw each other frequently whenever I was in Los Angeles.

Trusting this information will be of value to you.

Sincerely, Nathan Paul

[fol. 366]

(Copy)

MRS. LOUIS H. WALDECK

6410 Lindenhurst Avenue, Los Angeles 46, California

Committee of Bar Examiners
Los Angeles, Calif.

Dear Sirs:

I have been asked by Raphael Konigsberg to tell you of my knowledge of his person over the period of my knowing him.

I first made his acquaintance in 1947 as a candidate for the Los Angeles Board of Education. As a mother of two children attending Public School, I took this election very seriously and found Raphael Konigsberg's platform to be an excellent one and his background one that would well qualify him for such a post.

As a visitor only once at Duarte Sanatorium, I heard from a patient what a very fine job Raphael Konigsberg was doing as an Executive Social Worker in his work and programming to help the morale of the patients.

As a post-polio patient for over a year at Kabat-Kaiser Institute in Santa Monica, I met Raphael Konigsberg in the

[fol. 367] had either in 1949 or 1950 and he explained he was there to discuss the possibility of a position there as Recreational Director in the field of Rehabilitation for post-polio. At the time, I remember wishing that he would take the job because I felt that here was a person of real warmth, understanding and compassion for people and that he would be a great asset in planning activity for the physically inactive.

I very humbly feel then that Raphael Konigsberg would make a fine lawyer because of the above reasons both as to his fine character and his rich background in the field of Education and Social Work.

Sincerely, Mrs. L. H. Waldeck.

December 21, 1953.

[fol. 368]

(Copy)

JEAN SIEROTY

1002 North Rexford Drive—Beverly Hills, California

Jan. 2, 1954.

To the Committee of Bar Examiners,

I have known Raphael Konigsberg for a period of ten years and during that time found him honest, sound, and of good moral character.

Sincerely, Jean Sieroty.

[fol. 369]

COPY

Law Office

CHARLES GARDNER BULLIS

606 West Olympic Blvd

Los Angeles, Calif.

Written at Ferriday, La.

March 15th, 1940

Mr. Raphael Konigsberg
Los Angeles, California

Dear Mr. Konigsberg:—

There has just come to my attention the news that you have been suspended from the SRA as District Case Supervisor. I am deeply and sincerely distressed at this act and will be happy to do anything which I can to aid in continuing to assure to our State and Community your services. I think you, and the Administration know that I have no ax to grind, no personal favors to repay and no person whom I have to advocate on a basis of just personal friendship. I have come to know of you and your work and your purposes solely thru my contact in our mutual service in Committee work of the Council of Social Agencies. Frequently you and I may have differed on items or practices or even philosophy but I have never found any occasion but to admire you in the high purposes, in the intelligent grasp and efficient execution of any task set before you. I know that you would so act in your discharge of duties with the S.R.A.; I am convinced it is your makeup and you would give the same high standard of service to any cause with which you are associated and always for good government and Americanism. I admire your courage and your individualism which is always expressed with the constructive trimmings of tact and tolerance. I honestly believe your dismissal would be a real blow at efficient and honest administration. I am so writing Mr. Walter Chambers whom I cannot believe is a party to this move and you

are free to use my name and this letter before any appeal Board or in any way that will retain you in the S.R.A. service. They could not find anyone better qualified and I would unhesitatingly 100% recommend you for any place which required ability and honesty and familiarity with the problems of the work you have been accomplishing. This letter is written with deep conviction and with absolutely no purpose except an honest consideration of the highest type of public service.

With sincere respects to you and every good wish,

Sincerely

Gardner Bulks

(President, L.A. Council of Social Agencies)

[fol. 370]

C O P Y

Pasadena, California

March 13, 1940

Mr. Raphael Konigsberg
Los Angeles, California

Dear Mr. Konigsberg:

Very sorry indeed to learn that you have been suspended from your position as District Case Supervisor in the State Relief Administration.

I am at a loss to understand how it would be possible to bring the charges of "unprofessional conduct and disloyalty" against you, for one who has been in contact with you professionally for some time would know that you would never be guilty of unprofessional conduct.

We have always admired your painstaking and unselfish pursuit of the ideals of our profession of social work. Such fine professional conduct means that it would be impossible for you to be disloyal. On the other hand, I can understand perfectly how you might create criticism for yourself as a result of what I know to be your strong feeling against mixing politics and relief.

which, of course, is the feeling of all good professional social workers:

I feel very certain that with a fair and just hearing that you will be found blameless.

With every good wish, I am

Very sincerely yours,

s/ Matthew P. Adams

(Exec. Sec'y., Children's Home Society)

MPA:d

[fol. 371]

C O P Y

HARRY F. HENDERSON

1703 Oak Street

South Pasadena, Calif.

March 13, 1940

Mr. Raphael Konigsberg
Los Angeles, California

Dear Mr. Konigsberg:—

Information has reached me that you have been accused of unprofessional conduct and that your integrity has been questioned. You and I have not worked in close relations since you resigned from the position you filled so ably at the Council of Social Agencies in Los Angeles. My knowledge of you there however plus the less frequent contacts since, convinced me that you are not that kind of a person. I have always regarded you as a person of the highest professional standards and I have never had occasion to change my judgment.

I deeply regret the present difficulties that have come to you. I am sure that any charges as listed above are the result of mis-information and that they can easily be cleared up when the facts are known. I hope all the difficulties can be quickly resolved.

Yours very truly,

s/ Harry F. Henderson

(Former Exec. Director, Los Angeles YMCA)

[fol. 372]

C O P Y

Los Angeles, California

March 12, 1940

To Whom It May Concern:

I am employed in the community and am a member of two important national professional bodies which sponsor the highest standards of social work—the American Association of Social Workers and the American Association of Psychiatric Social Workers. Last year I was the vice-chairman of the former local chapter and this year I am the chairman of the latter local group.

It has been my privilege to know Raphael Konigsberg in a professional capacity for the past several years, particularly in relation to executive committee activities of the American Association of Social Workers and Social Work Today.

Because of his live-wire, honestly, direct and analytical approach to all manner of social problems, my observation has particularly focused on Mr. Konigsberg. Fortunately, he is a vocal person and has been able to articulate his views on issues of professional significance, having to do with worker-client relations, personnel practices, etc.

Though at times, as in all honorable groups, there have been differences of opinion, I have never known Raphael Konigsberg to deviate from the professional role, in its finest sense. He may have defended a measure vigorously but if counter expressions convinced him, he has been able to concede in a truly gracious manner without hostility or without leaving any odor of the recanter or sycophant.

I am impressed with the man's sensitiveness in the matter of human relations, his ability to think clearly and cleanly even when this thinking is in opposition to what may be considered at the moment, acceptable to a particular group.

[fol. 373] One gets to know a person rather well through committee work over a period of time. I believe profes-

sional conduct has literally and figuratively been the key-stone of Mr. Konigsberg's relationships.

Very sincerely your,

/s/ Ernestine Lewin,
Psychiatric Social Worker
(L.A. County Probation Dept.)

EL:ELB

[fol. 374]

March 4, 1939

Mr. Benjamin F. Culver
Acting Director of Personnel
California State Relief Administration
180 New Montgomery Street
San Francisco, California

Dear Mr. Culver:

I am in receipt of your letter of March 3 relative to Mr. Raphael Konigsberg who was employed, as stated, in your letter, for the Council of Social Agencies in the position and at the salary which you give, and during the periods which you list.

In the spring of 1936, when I was establishing a Research Department in the Council, I searched diligently for a Director and an Assistant who were educationally qualified, in social work and with such experience, and personality as to qualify them for the organization of our department. I considered numbers of applicants and interviewed many, not only in Los Angeles but in Chicago, Washington, New York and Atlantic City, where the National Conference was being held that year. From this large group I selected Mr. Konigsberg who, at that time, was in the employ of the Federal government in Washington, D. C., in a research position. Mr. Konigsberg had excellent references which I have filed in my office and I shall be glad to have copies made if you wish them.

Mr. Konigsberg lived up to every expectation which I held for him and it was with real regret that I saw him leave us. The position to which he went offered wider

opportunities and much higher salary, and it was to his own interests and that of the community that he accepted the position with the Jewish Community Council of Los Angeles.

I admire Mr. Konigsberg for his intellectual ability, his conscientious devotion to his ideals and his work. I believe that the public service will be the better for his employment in it. If I can give you any further information about Mr. Konigsberg, I shall be pleased to do so.

Sincerely yours,

Mary Stanton,
Executive Secretary.

[fol. 375]

March 22, 1940

Copy

Mr. Walter P. Chambers
State Relief Administration
155 W. Washington
Los Angeles, California

Dear Mr. Chambers:

As you probably know, I am a member of the committee which is undertaking to "sponsor" the case of Raphael Konigsberg and to gather in his credentials as a professional worker. In this connection I feel that I should write you regarding my own knowledge of Mr. Konigsberg and my impressions relative to the present difficulty.

I have been well acquainted with Mr. Konigsberg ever since he came to California (which has now been several years) and for almost all of those years I have been in close contact with him and whatever work he was doing. I share the very high opinion which is general throughout social work of Mr. Konigsberg's professional integrity and of his utter sincerity of character. I also know that he has had very solid training in his profession and that he has shown unusual and outstanding ability in every piece of work which he has undertaken. I would call Mr. Konigsberg an unusually talented and intelligent social worker.

As you will remember, I sought for Mr. Konigsberg's assistance as the head of one of my departments during the short period last year when I was loaned to the State Relief Administration as Director of its Non-Resident Bureau. I then had the opportunity to see for myself that Mr. Konigsberg was as well equipped and as able as I had previously thought him to be from my more remote contacts in various community enterprises in which we were both engaged.

During all of the years that I have known Raphael I have found him to be absolutely honest in the broadest sense of this word and to have a type of professional integrity which is unfortunately rare even in social workers—that type which will actually lead a person to sacrifice his position and be in danger of going hungry rather than stain his professional honor and violate his code of ethics. As we grow older it becomes more difficult to disillusion any of us but I should suffer a fresh disillusionment if I found that Raphael Konigsberg had acted in a manner which would cause shame or embarrassment to honorable professional colleagues! . . .

It would be horrifying to our whole professional group that a man such as Raphael Konigsberg should be suspended or dismissed at the behest of such a low type of political appointment as Mr. Waters seems to be. It is difficult to find a much cheaper type of person than a man who boasts to his whole staff that he has been appointed because of his contributions to the party.

It is my belief that you have not had an opportunity to give attention to this episode in all its ramifications and that when you do so, you will immediately correct the injustice to Raphael Konigsberg by reinstating him in office. I wish to add my earnest request to that of many others in the American Association of Social Workers that you do this at the earliest possible moment.

Sincerely yours,

(Mrs.) Dorothy Wysor Smith,
Executive Secretary,
Travelers Aid Society
of Los Angeles.

[fol. 376]

STATE OF CALIFORNIA

Department of Mental Hygiene

1320 K Street

Sacramento

February 4, 1954

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I recently received word from Mr. Raphael Konigsberg that he took the bar examination in October and that the Bar Examiners are interested in receiving references as to his character.

I have known Mr. Konigsberg for about 18 years and had fairly frequent contact with him during the earlier part of this period while we were both working as social work executives. I found him to be an unusually honest, sincere and dependable person, and one who was constantly dedicated to the welfare of the people he served. I was sorry to see him leave the field of social work where I feel he made a real contribution, but believe that he should bring to the profession of law an integrity and social perspective that would enable him to do a constructive job, primarily because of his interest in service rather than the material gains that might be derived.

I have not been in touch with him except sporadically during the past eight or ten years, but from the reports I have heard about his work it would seem that he has continued his good reputation.

Very sincerely yours,

Nathan Sloate,

Chief of Social Service.

NS:vb

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[File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

vs. RAPHAEL KONIGSBERG, *Petitioner*,

vs.

THE STATE BAR OF CALIFORNIA, AND THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA, *Respondents*

ANSWER OF RESPONDENTS TO PETITION TO REVIEW, UNDER RULE 59(b), RULES ON APPEAL, DENIAL OF APPLICATION FOR CERTIFICATION TO THE SUPREME COURT FOR ADMISSION TO PRACTICE LAW—Filed September 7, 1954

Answering the petition herein of Raphael Konigsberg, the respondents admit, deny and allege as follows:

1. Admit the allegations of Paragraph 1 of the petition that petitioner registered as a law student on the form prescribed by the Committee of Bar Examiners, and that said Committee is a duly established committee under the authority of the State Bar Act.

2. Denies the allegations of Paragraph 2 of the petition that the applicant fully, truthfully or accurately fulfilled all of the conditions and requirements established for permission to take the written bar examination in October of 1953. Respondents allege that petitioner was granted permission to take said bar examination upon the express understanding and condition that no determination had been made as to his good moral character and that no steps would be taken to certify him to this Honorable Court for admission to practice law in the State of California until and unless an affirmative determination of good moral character was made.

Respondents allege that petitioner did not fully, truthfully and accurately answer the following questions con-

tained in his registration statement as a law student in that in said statement [Ex. 4] petitioner made the following answers to the following questions:

“4. Moral Character and Fitness:

(a) Have you ever been summoned, arrested, taken into custody, indicted, convicted or tried for or charged with, or pleaded guilty to, the violation of any law or ordinance or the Commission of any felony or misdemeanor (Include all such incidents no matter how minor the infraction or whether guilty or not. Although a conviction may have been expunged from the records by order of court it nevertheless must be disclosed in your answer to this question)?

No

(Yes or No)

If so, state the facts completely but concisely for each case, and give the date, name and nature of the offense, name and locality of court, and disposition of each such matter.

(c) Have you ever been a party to or had or claimed an interest in any civil proceedings?

No

(Yes or No)

If so, give details.

(j) Is there any incident of a derogatory nature in your life not called for by the foregoing questions which may have some bearing on your character and fitness to practice law?

None

(Yes or No)

If so, state facts fully but concisely.

But, in petitioner's Bar Application [Ex. 5] his answers show that he was guilty of seven traffic violations, had been a party to a Small Claims Court action and had made appearances before the "Tenney Committee" and the "Dilworth Committee" in connection with his association with certain communist front organizations. All of these matters occurred prior to the filing of the Registration Statement and should have been included in a full, truthful and accurate answer of the questions listed above.

Respondents allege on information and belief that petitioner was associated with the communist party and participated or acquiesced in actions of that party, all of which are matters casting doubt on his character or fitness to practice law and should have been included in a full, truthful and accurate answer to question 4(j) of the registration statement. Question 22 of the Bar Application is identical to question 4(j) of the registration statement, and respondents further allege on information and belief that petitioner's "No" answer to question 22 is not a full, truthful and accurate answer in that it fails to mention or explain his apparent connections with the communist party and the immoral acts thereof.

Respondents have no information or belief sufficient to enable them to admit the allegation that the other conditions and requirements of taking the bar examination were fully, truthfully and accurately fulfilled and for that reason deny the same.

3. Admit the allegations of Paragraph 3 of the petition that petitioner passed the October 1953 bar examination and thereby fulfilled the requirements of the Bar Examiners in this particular.

4. Admit the allegations of Paragraph 4 of the petition that petitioner personally appeared at hearings before the Southern Subcommittee of the Committee of Bar Examiners on the 25th day of September, 1953, the 9th day of December, 1953, and the 27th day of January, 1954; that petitioner's Exhibit "A" is a full, true and correct copy of the official reporter's transcript of these hearings; that on the 8th day of February, 1954, the Southern Subcommittee of the Committee of Bar Examiners informed petitioner that his application for certification for admission to the Bar in the State of California had been denied; and that petitioner thereafter informed the Committee of Bar Examiners that he desired to appeal to the full Committee of the Committee of Bar Examiners. Respondents deny the allegation in Paragraph 4 of the petition that petitioner was directed to appear before the Southern Subcommittee of the Committee of Bar Examiners. Respondents allege that on or about the 18th day of September, 1953, petitioner was advised by the Committee of Bar Examiners that his application to take the October, 1953, bar examination would be considered by the Southern Subcommittee on the 25th day of September, 1953, and that petitioner was invited to appear. Respondents further allege that petitioner voluntarily appeared at the September 25, 1953, hearing, that petitioner was informed of evidence which had come to the attention of the Subcommittee and which raised doubts whether petitioner was qualified for admission to the State Bar of California; that petitioner was questioned under oath concerning such evidence and as to other matters relevant to his qualifications as a member of the State Bar of California, that additional hearings were held by the Subcommittee on the 9th day of December, 1953, and the 27th day of January, 1954, that petitioner attended these hearings, represented by counsel, and was given a full and complete opportunity to present affirmative evidence of his fit-

ness to practice law, and to question, explain or otherwise comment on the evidence against him (including the right to cross-examine the witness who had testified against him). Petitioner, through counsel, has affirmed that he was given a full, complete and fair hearing by the Southern Subcommittee of the Committee of Bar Examiners.

- 5. Admit the allegations of Paragraph 5 of the petition relative to the hearing before the full Committee of Bar Examiners, and allege that said hearing was full, complete and fair in all its aspects.

Petitioner has not included in his Record on Appeal the Exhibits presented in the hearings before the Committee and the Subcommittee. Since these Exhibits formed an integral part of the hearings and were given due consideration by the Committee in arriving at its decision, they are necessary to complete consideration of this appeal. Accordingly, respondents have transmitted the originals of all exhibits introduced at the Committee and Subcommittee Hearings as listed below:

COMMITTEE EXHIBITS

1. Photostats of California Eagle columns written by Raphael Konigsberg.
2. Konigsberg's testimony before the Tenney Committee.
3. Konigsberg's written statement to the Tenney Committee.
4. Konigsberg's Registration as a law student.
5. Konigsberg's Bar Application.
6. Photostats of pages from the California Eagle on which Konigsberg's columns appear. (All of Konigsberg's columns included here are also set forth in Exhibit 4 but Exhibit 6 places them in the context in which they appeared.)

KONIGSBERG'S EXHIBITS

- A. War Department Technical Manual (TM 28-210).
- B. War Department Mobilization Regulation ("Morale").
- C. Army Orientation Fact Sheet.
- D. Article by Raphael Konigsberg published in the National Jewish Monthly in 1944, entitled "Why I Am in This Fight."
- E. File of letters attesting to Konigsberg's good moral character.
- F. Legal memorandum in support of Konigsberg's Application.
- G. Newspaper clippings of the "Law in Action" column discussing witnesses' privileges.

6. Admit the allegations of Paragraph 6 of the petition relative to the denial by the full Committee of Bar Examiners of petitioner's application and that the letter attached as Exhibit "D" is a true copy of the Committee's letter informing the petitioner of this denial.

7. Admit the allegations of Paragraph 7 of the petition.

8. Deny generally and specifically each and all of the allegations of Paragraph 8 of the petition.

For a Further, Separate And Affirmative Answer To Said Petition, Respondents Allege:

1. Respondent, The State Bar of California, is and was at all times mentioned herein a public corporation organized and existing under and by virtue of the State Bar Act (Stats. 1939, Ch. 34, p. 347, as amended; Ch. 4, comprising Secs. 6000 to 6154, incl., Div. III of the Bus. and Prof. Code);

2. Respondent, Committee of Bar Examiners of The State Bar of California, is and was at all times mentioned

herein the Committee established by the Board of Governors of respondent State Bar, having the power:

(a) to examine all applicants for admission to practice law;

(b) to administer the requirements for admission to practice;

(c) to certify to the Supreme Court for admission those applicants who fulfill the requirements provided in said chapter.

At all times mentioned herein the statutory requirements for admission to practice included (Cal. Bus. and Prof. Code, Secs. 6060(c) and 6064.1):

6060. *Qualifications for applicants.* To be certified to the Supreme Court for admission and a license to practice law, a person who does not comply with Section 6062 shall:

(c) Be of good moral character.

6064.1. *One advocating the overthrow of government not to be admitted.* No person who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law."

Pursuant to the provisions of the State Bar Act, Chapter 4, Division III, of the Business and Professions Code, said Committee of Bar Examiners, prior to the matters referred to in said petition and in this answer, had adopted, and the Board of Governors of The State Bar of California had approved certain rules regulating admission to practice law in California, which rules were in full force and effect at the time of the occurrences referred to in said petition and in this answer. Section 101 of Rule X of said

Rules interprets and provides for the application of California Business and Professions Code, Section 6060(c):

"Section 101. Every applicant shall be of good moral character. Investigations in reference to the moral character of applicants may be informal, but shall be thorough, with the object of ascertaining the truth. Neither the hearsy rule, nor any other technical rule of evidence, need be observed; but an applicant shall be advised of any and all information received by the committee adversely bearing on his moral character upon which a denial of recommendation by the committee is based, and he shall be given a reasonable opportunity to rebut or explain the same. The applicant shall have the burden of proving that he is possessed of good moral character, of removing any and all reasonable suspicion of moral unfitness, and that he is entitled to the high regard and confidence of the public."

3. On or about the 4th day of December, 1950, petitioner filed with respondents a sworn registration as a law student, and on or about June 30, 1953 filed with respondents his sworn application for examination to practice law. Each was on the form prescribed by respondents. In each case the applicant replied in the negative to the question:

"Is there any incident of a derogatory nature in your life not called for by the foregoing questions that may have some bearing on your character and fitness to practice law?"

Information received by the Committee of Bar Examiners led the Committee to question the truth and propriety of petitioner's answer and to suspect that petitioner might not qualify under California Business and Professions Code, Sections 6060(c) and 6064.1. Accordingly, petitioner was invited to appear at a hearing before the Southern Sub-

committee of the Committee of Bar Examiners on the 25th day of September, 1953, at which time he was informed of evidence raising doubts as to his fitness to practice law, and was questioned concerning such evidence and other matters relevant to his qualifications to become a member of the State Bar of California.

No determination regarding petitioner's moral character and fitness was made at the September 25, 1953 hearing, and petitioner was allowed to take the October, 1953 bar examination on the express understanding and condition that, regardless of the results of his bar examination, no step would be taken to admit him to the Bar until his moral fitness was established.

4. Petitioner passed the October, 1953 bar examination.

5. Additional hearings to determine petitioner's compliance with the requirements for admission to the State Bar of California were held before the Southern Subcommittee of the Committee of Bar Examiners on the 9th day of December, 1953 and the 27th day of January, 1954. Petitioner was present, with counsel, at said hearings and was given a full and fair opportunity to answer, explain, or comment on the detrimental evidence, cross-examine the witness against him, and affirmatively present any evidence or statements showing his moral fitness. Petitioner, through his attorney, has stated that said hearings were absolutely fair and impartial. A full, true and correct copy of the official reporter's transcript is attached to the applicant's petition as Exhibit "A."

6. On or before the 8th day of February, 1954 the Southern Subcommittee of the Committee of Bar Examiners considered all of the evidence which had been presented, and determined that petitioner had failed to show his good moral character so that his application must be denied. On or about the 8th day of February, 1954 said Subcommittee informed the petitioner in writing of the denial of his appli-

cation and the reasons therefor. Petitioner thereup informed the Committee of Bar Examiners that he desired to appeal to the full Committee of the Committee of Bar Examiners.

7. On the 13th day of March, 1954, a hearing was held before the full Committee of Bar Examiners in the City of Los Angeles, and evidence, both oral and documentary, was taken. Petitioner has never questioned the completeness, fairness or impartiality of said hearing. A full, true and correct copy of the official reporter's transcript of said hearing is attached to petition as Exhibit "B."

On or prior to the 17th day of May, 1954 respondents considered all of the evidence which had been introduced, and determined that petitioner had not sustained the burden of proof that he was possessor of the good moral character required by California Business and Professions Code, Section 6060(c) and that he had not complied with Section 6064.1 of said Code, so that his application must be denied. Petitioner was notified of this decision and the reasons therefor by letter dated May 17, 1954.

8. Petitioner has not complied with the requirements of California Business and Professions Code, Sections 6060(c) and 6064.1 and so is not entitled to be and should not be admitted to practice law in the State of California.

Wherefore, respondents pray that it be adjudged that the application of petitioner was properly denied by respondents and that petitioner is not entitled to be admitted to practice law in the State of California.

Ralph E. Lewis, Robert D. Burch, Frank B. Belcher,
by Frank B. Belcher, Attorneys for Respondents.

Duly sworn to by Alma Stayton. Jurat omitted in printing.

Proof of service (omitted in printing).

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Office Supreme Court, U.S.

FILED

1959

JAMES R. BYRNE, Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

No. 661-28

RAPHAEL KONIGSBERG,

Petitioner,

v.s.

THE STATE BAR OF CALIFORNIA and THE COMMITTEE OF
BAR EXAMINERS OF THE STATE OF CALIFORNIA,

Respondents.

Petition for a Writ of Certiorari to the Supreme
Court of the State of California.

EDWARD MOSK,

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Hollywood 28, California,

Attorney for Petitioner.

SAMUEL ROSENWEIN,

Of Counsel.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

No.

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and THE COMMITTEE OF
BAR EXAMINERS OF THE STATE OF CALIFORNIA,

Respondents.

Petition for a Writ of Certiorari to the Supreme
Court of the State of California.

Petitioner, Raphael Konigsberg, respectfully prays for
a Writ of Certiorari to the Supreme Court of the State
of California to review the denial of his application for
admission to the State Bar of California.

Opinions Below.

On March 17, 1954, the Committee of Bar Examiners
of the State Bar of California wrote to Raphael Konigs-
berg informing him that "It is the committee's deter-
mination that you have not sustained the burden of proof
(1) that you are possessed of the good moral character
required by section 6060(c) of the State Bar Act, or (2)
that you comply with the provisions of Section 6064.1 of
said Act.

"Your application is denied." [A copy of this letter is set forth in full as Ex. "A" attached hereto.]

Thereafter, Petitioner sought review by the Supreme Court of California but on April 20, 1955 his petition was denied without opinion by a divided court; Chief Justice Gibson and Justices Traynor and Carter voting for a hearing.

Thereafter on May 6, 1957, the Supreme Court of the United States reversed and remanded the matter to the Supreme Court of California "for further proceedings not inconsistent with this opinion". (*Konigsberg v. State Bar*, 353 U. S. 252.)

After remand petitioner applied to the Supreme Court of California for immediate admission to the Bar but the court instead vacated its prior order denying the petition for review and referred the entire matter back to the Committee of Bar Examiners for further proceedings. The Committee of Bar Examiners conducted a hearing on September 21, 1957 and thereafter refused to certify Konigsberg for admission to the Bar [see Exhibit B]. Petitioner then sought review of the action of the Bar Examiners and also again applied directly to the Supreme Court for admission to practice.

On October 16, 1959, the Supreme Court of California, *per curiam*, adopted and approved the findings of the Committee of Bar Examiners. Chief Justice Gibson "deemed himself disqualified" and did not participate in the decision. Separate dissenting opinions were filed by Justice Traynor and Justice Peters. The entire opinion, including the two dissenting opinions, is attached hereto as Exhibit C.

Jurisdiction.

The judgment of the Supreme Court of California was entered October 16, 1959; timely Petition for Rehearing was filed and said Petition for Rehearing was denied November 10, 1959.

The jurisdiction of this court is invoked under 28 U. S. C. 1257.

The court has heretofore granted certiorari in this matter based upon facts substantially identical with those upon which the case is presently before this court. (*Konigsberg v. State Bar*, 353 U. S. 252; (see also *Schwartz v. Board of Bar Examiners of the State of New Mexico*, 353 U. S. 232).)

The constitutional provisions and statutes involved are set forth in the Appendix as Exhibit D.

Questions Presented for Review.

1. Whether the judgment of the court below, upholding the action of the State Bar Committee of Bar Examiners, refusing to certify petitioner to the court for admission to practice law in California and denying petitioner's application for admission to the bar of California, is inconsistent with this court's opinion, findings, judgment and mandate in *Konigsberg v. State of California*, 353 U. S. 252 (1957), with the resultant deprivation of petitioner's liberty and property without due process of law and the denial to him of the equal protection of the laws in violation of the due process and equal protection provisions of the Fourteenth Amendment to the United States Constitution.

2. Where this court has held that the petitioner successfully met all state requirements, and that a denial

of petitioner's application for admission to the bar would be a deprivation of petitioner's liberty and property without due process of law, is it not an arbitrary and capricious act and an abridgement of petitioner's right to pursue his chosen profession and right to the exercise of freedom of speech, press and assembly contrary to the due process provisions of the Fourteenth Amendment to coerce petitioner in subsequent state proceedings on remand to reveal his political affiliations as a newly contrived condition to admission to the bar where in the said subsequent proceedings the State Bar Committee of Bar Examiners comes forward with no affirmative or further proof of petitioner's disqualification to warrant or justify the aforesaid limitation upon petitioner's rights under the Constitution?

3. Where the record before this court in *Konigsberg v. State of California*, 353 U. S. 252 (1957), conclusively established that petitioner was of good moral character and did not advocate the forceful overthrow of Government and that petitioner had fulfilled all requirements affecting the right to pursue his chosen profession, and when on remand the record in subsequent proceedings and brought up to date shows the same good moral character and loyalty, is it not arbitrary and capricious and a deprivation of petitioner's liberty without due process of law and denial to him of the equal protection of the laws in violation of the applicable provisions of the Fourteenth Amendment to refuse to certify petitioner for admission to practice law and deny his application for admission to the bar solely because of petitioner's refusal to reveal his political affiliations?

4. Where the entire record demonstrates that petitioner has declined to reveal his political affiliations solely

upon grounds of long held principle and private conscience, is it not a deprivation of petitioner's freedom of speech, press, assembly and conscience, contrary to the due process inhibitions of the Fourteenth Amendment, to deny petitioner admission to the bar solely because of petitioner's conscientious refusal to reveal his political affiliations?

5. Where the entire record reveals that petitioner has met the ordinary requirements for admission to the Bar and has overwhelmingly established his loyalty and good moral character, is it not arbitrary, unreasonable and capricious and a deprivation of petitioner's liberty and property without due process of law to deny petitioner admission to the bar solely because of his refusal to reveal his political affiliations in the light of the state and national interest in a free and independent bar and the free exercise of speech, press, assembly and private conscience?

6. Where the petitioner has met all statutory requirements for admission to the Bar and has complied with all written and formally promulgated rules of the Committee of Bar Examiners as pre-requisites to admission to the Bar and has met every standard established by judicial decision in the State of California relating to admission to the Bar, is it not a denial of petitioner's liberty and property without due process of law and a denial of equal protection of the laws for the petitioner to be denied admission to the Bar on the basis of a "rule" requiring that he answer questions relating to his political affiliations where that "rule" is first announced and tailored to his specific situation at a hearing held seven years after he commenced the study of law and subsequent to the mandate, decision and opinion of the Supreme Court of the United States on the facts of his case?

Statement.

In the year 1950 Raphael Konigsberg entered the University of Southern California Law School and commenced the study of law. In October of 1953 he completed all of the educational requirements and passed the written bar examination offered by the State Bar.

In 1953 and 1954, a series of hearings was held to determine Konigsberg's eligibility under statutory requirements that an applicant for admission to the practice of law be a person of good moral character and not be a person who advocates the overthrow of the Government of the United States by force or violence. (A complete transcript of these hearings is before this court in the record heretofore presented to the court in the matter of *Konigsberg v. The State Bar of California*, decided by this court on May 6, 1957.)

On the record of those proceedings, the Committee of Bar Examiners refused to certify the petitioner, contending that he had failed to meet his burden of proof as required by law. The Supreme Court of California refused to review the matter, although three members (Chief Justice Gibson and Justices Traynor and Carter) voted for a hearing.

Thereafter, this court granted certiorari and handed down its opinion on May 6, 1957, reversing and remanding the matter for further proceedings not inconsistent with the opinion.

On remand to the Supreme Court of California, that court vacated its prior order denying the petition for re-

view and referred the entire matter back to the Committee of Bar Examiners. The committee conducted a hearing on September 21, 1957.¹

In these proceedings, petitioner moved the committee for a recommendation of immediate admission of the petitioner under the mandate of the Supreme Court. Petitioner pointed out that failure to do so would be a denial of due process and equal protection of the law. [Sept. Rec. p. 5]. The Committee of Bar Examiners denied petitioner's motion and proceeded to conduct the hearing. [Sept. Rec. p. 13].

In the course of this hearing, petitioner produced a witness who had employed petitioner as an office manager for the previous two and one-half years in connection with a tract housing project. This witness said in part:

"I think he is probably the most honest, both intellectually as well as legally the most honest man I have ever met: That was one of the things that impressed me in the very beginning when I hired him, and it has been re-affirmed by our experiences in the past two and one-half years. His ethics and his attitudes, his sincerity, his loyalty is beyond all reproach." [Sept. Rec. p. 17].

This witness pointed out that the petitioner had become vice-president of numerous corporations operated by the witness and had power to sign checks on the general company account which at times may have "as much as a quarter of a million dollars in it." [Sept. Rec. p. 17].

¹The Record of this proceeding is part of the record forwarded by the Supreme Court of California and will be referred to herein as "Sept. Rec."

The Committee was offered the opportunity to cross-examine the witness, but did not do so. [Sept. Rec. p. 19]. Later in the hearing the petitioner submitted thirteen additional letters from lawyers, doctors, certified public accountants, architects and other professional persons relating to his good moral character. [Sept. Rec. p. 56].

The remainder of the hearing consisted of further examination of Konigsberg. [Sept. Rec. pp. 20-56].

Not one single matter derogatory to Konigsberg's moral character, nor any evidence relating to Konigsberg's belief in or advocacy of overthrow of the Government by force and violence, was introduced at the hearing.

At the conclusion of the hearing, the Chairman of the Committee conceded that the Committee had employed an independent investigator to investigate Konigsberg and stated on the record that "prior to the time any information that is adverse to Mr. Konigsberg is considered by the committee, Mr. Konigsberg and you as his counsel will be made aware of that adverse information." [Sept. Rec. p. 58]. At no time during the hearing or subsequent thereto has any adverse information been introduced into the record or otherwise transmitted to the petitioner. The record therefore contains no information adverse to petitioner.

At the September 1957 hearing, petitioner answered all questions asked of him, except the specific question inquiring as to past or present membership in the Communist party. He pointed out that he had declined to answer similar questions on grounds of moral principle at the previous hearings and he "could hardly be expected at this point for expediency to give up principles that have been upheld by the highest court of our country." [Sept. Rec. p. 29].

He continued, however, by stating that:

"Now, if you ask me whether I as a person ever belonged to an organization that advocated the overthrow of the Government by force and violence; according to my knowledge of it, or whether I personally ever advocated this or ever did anything such as throwing a bomb or writing a leaflet or speaking of advocating the overthrow of the Government by force or violence, or even whether I ever attended a meeting at which force and violence was proposed as a course of action, the answer is no. I personally have never been a member of any organization which to my knowledge engaged in such advocacy. I never could be or would be. I never did a thing in that direction, I made clear in the prior hearings." [Sept. Rec. pp. 29-30].

A few moments later the petitioner said:

"I think the record makes very clear, whatever you may think of those principles, that I have tried to live a principled life, and that being the case you can hardly ask me as a matter of conscience or a matter of principle to give up various principles. This would be committing on my part an immoral act. I doubt very much that the committee intends to take the position that to prove his good moral character an applicant must commit what to him is an immoral act." [Sept. Rec. p. 31].

And when petitioner was asked the same question again in another manner, he responded by saying:

"I think my previous answer covers it. I will only reaffirm to my knowledge I have never been a member of such an organization or group, a part of an

organization, or however you want to phrase it. I think this would clarify the matter. May I ask that I think you are rightly concerned with matters of advocacy of the overthrow of the Government, but it seems to me that you had the opportunity in the previous hearings, and you have it now, if you have any evidence of any illegal acts on my part, then they should be brought forward, and give me a chance to answer them, and I will be happy to answer them, not proceed on the basis of mere suspicions. If you have acts, or evidence of any acts, I ask you now to bring them forward so I can answer them." [Sept. Rec. p. 32].

The committee endeavored at several times by words of the chairman to state that they would consider the failure to answer a material question an obstruction of the investigation, which would result in a failure to certify Konigsberg. The committee did not specify any rule of the committee, any statute, or any decision of the Supreme Court of the State justifying this conclusion. Any reference to a "Rule" was through the words of the chairman or other members of the committee, during the course of the hearing.

Thereafter the Committee of Bar Examiners refused to certify Konigsberg for admission to the Bar and this action was adopted and approved by the Supreme Court of California. (52 A. C. 799 (1959).)

Petitioner has at all stages of these proceedings indicated that a failure to admit him would be a denial of due process and equal protection of the laws in violation of the Fourteenth Amendment to the Constitution.

Petitioner raised this constitutional question at the first moment of the new hearing before the Committee of Bar Examiners on September 21, 1957 [Sept. Rec. pp. 5-11] and in his petition to the Supreme Court of California, both before and after the September 21, 1957 hearing. (See Petitioners "Brief in opposition to report of Committee of Bar Examiners and in support of motion to admit petitioner to the practice of law.")

This court stated in *Konigsberg v. State Bar of California*, 353 U. S. 252 that:

"If it were possible for us to say that the board had barred *Konigsberg* solely because of his refusal to respond to its inquiries into his political associations and his opinions about matters of public interest, then we would be compelled to decide far reaching and complex questions relating to freedom of speech, press and assembly."

The Supreme Court of California apparently interpreted the opinion of this court as giving California the right to bar *Konigsberg* solely because of his refusal to respond to its inquiries into his political associations and affiliations. Petitioner will indicate hereafter that he does not conceive that to have been the intention of this court. Nevertheless, since the Supreme Court of California has chosen to so interpret the opinion of this court, it is clear that "far reaching and complex questions relating to freedom of speech, press and assembly" have been raised by this case which invoke the jurisdiction of this court.²

²See also Mr. Justice Peters' dissenting opinion in this matter where he states that "the result of the action (of the majority of the California Court) is that, in my opinion, applicant has been denied due process and equal protection."

Reasons for Granting the Writ.

1. This court has stated that:

"It is difficult to comprehend why the State Bar Committee rejected a man of Konigsberg's background and character as morally unfit to practice law."

It is even more incomprehensible that Konigsberg has still been denied admission to the bar of the State of California, more than two years later.

This court reversed and remanded this case for further proceedings not inconsistent with its opinion. Since that remand, the only factual changes in the record are:

a. Because the briefs filed by respondent before this court questioned the probative value of character reference letters submitted by the petitioner at the 1954 hearings, petitioner brought his employer for the previous two and one-half years before the Committee to give the committee an opportunity to cross-examine one of those who attested to his good character. No challenge was made to the truth or accuracy of this testimony and no cross-examination was conducted.³

b. Because three years had transpired since the prior hearings, petitioner introduced additional evidence from persons in all walks of professional life in Los Angeles, attesting to his continued good moral character.

c. The Chairman of the Committee of Bar Examiners conceded that the committee had employed an in-

³The failure to examine or cross-examine this witness or any character witnesses offered by Petitioner reinforces the thesis that the Committee was less interested in the truth about Konigsberg's character than in finding and establishing a technical basis for denying him admission to the Bar.

investigator to investigate the character of petitioner and stated that no adverse evidence to petition was being considered by the committee in reaching its decision.

d. Petitioner offered directly and unequivocally to respond to any questions relating to allegations of wrongdoing affecting petitioner's good moral character or his possible belief in the overthrow of the Government by force and violence. Not one question was asked of petitioner even suggesting that the findings of this court were no longer valid.

e. With this record before the committee, Konigsberg was told that if he failed to answer questions about Communist Party membership, he could be denied admission to the Bar. Konigsberg responded that he had declined on principle to answer prior to the Supreme Court's opinion and he could not for expediency's sake give up his principles after they had been characterized by this court as bearing weight.⁴ He specifically volunteered, however, fully to respond to any questions relating to any allegations of wrongdoing.

"After examination of the record, we are compelled to agree with Konigsberg that the evidence does not rationally support the only two grounds upon which the committee relied in rejecting his application for admission to the bar."

"When these items are analyzed, we believe that it cannot rationally be said that they support substantial doubts about Konigsberg's moral fitness to practice law."

"In this case, we are compelled to conclude that there is no evidence in the record which rationally justifies the finding that Konigsberg failed to establish his good moral character or failed to show that he did not advocate forceful overthrow of the Government. Without some authentic reliable evidence of unlawful or immoral actions reflecting adversely upon him, it is difficult to comprehend why the State Bar Committee rejected a man of Konigsberg's background and character as morally unfit to practice law." (*Konigsberg v. State Bar*, 353 U. S. 252.)

The record of this case since this court's decision and respondent's argument in the matter before the Supreme Court of California, clearly indicates a calculated effort on the part of respondent to subvert the mandate of this court. Respondent couches its denial in language indicating that it denied petitioner admission to the Bar solely because of his refusal to answer specific questions but at the same time respondent continues to rely on improper implications drawn from the articles written by petitioner more than ten years ago as a basis for establishing the relevancy of the questions.⁶

Because not one new fact adverse to petitioner has been entered on the record since the opinion and mandate of this court, petitioner continues to be denied due process of law and equal protection of the laws under the Fourteenth Amendment to the Constitution when respondent ignores the mandate of this court and refuses to admit petitioner to the practice of law in the State of California.

2. The aforesaid is reinforced by examination of the legal requirements for admission established by the Busi-

⁶In his argument before the California Supreme Court, counsel for respondent devoted substantial time—more than six pages in the transcript of oral argument—to reading from and summarizing a number of newspaper articles which petitioner had written several years before. [Transcript of oral argument before Supreme Court of California, pp. 30-36.] This fact is especially worthy of note by virtue of the fact that these were the self-same articles upon which the State Bar relied as part of its rationale for refusing to certify Konigsberg the first time; these articles were before this court upon its first hearing of this case and were considered in its opinion (353 U. S. 268-269). They were dismissed by the Court as "not unusually extreme" and as a legitimate editorial commentary upon public officials and events giving rise to neither an inference of bad moral character nor an inference of advocacy of violent overthrow (353 U. S. 272-273).

ness and Professions Code of the State. An applicant must be:

1. Properly educated;
2. Of good moral character;
3. A person who does not advocate the overthrow of the Government of the United States of the State of California by force, violence or other unconstitutional means.

There is no dispute here that petitioner met all necessary educational requirements almost 6 years ago and this court found in *Konigsberg v. State Bar* that petitioner met all the prerequisites for admission.

The record is devoid of any showing that the legislature of the State of California has passed any legislation authorizing denial of admission to the bar solely because an applicant declines to answer questions of the nature propounded to this petitioner.⁶ 'Such legislation would be a denial of due process and equal protection of the law if applied to this petitioner at this late date. But the efforts to promulgate such a rule by casual "across the table" warning of the Chairman and/or other members of the Committee of Bar Examiners during the course of a Hearing held subsequent to the opinion and mandate of this court, seven years after petitioner commenced the study of law and four years after he complied with all statutory requirements and all rules set forth in the adopted Rules of the Committee of Bar Examiners becomes capricious, arbitrary and a violation of petitioner's constitutional rights.

⁶As a matter of fact efforts to pass such legislation have been repeatedly defeated in the California Legislature. See among others Senate Bill 1666, 1951 California Legislative Session; Senate Bill 298 in 1949 Session, and Assembly Bill 1800, 1955 Session.

3. This court found that petitioner's refusal to answer questions relating to his political affiliations and associations was founded upon good faith and that based upon prior decisions of this court was not frivolous (353 U. S. 270). Again, the subsequent record only reinforces this showing of good faith; and respondent in effect conceded this good faith when it failed to lay any foundation for asking further questions regarding petitioner's political associations and failed to show any other acts on the part of petitioner justifying a denial of admission to the Bar. Respondent simply rests its entire denial on the refusal to answer the identical questions which petitioner had refused to answer prior to the opinion and mandate of this court in *Konigsberg v. State Bar*. Since respondent has not moved forward with any evidence to counterbalance petitioner's *prima facie* showing its denial of admission continues to constitute a denial of due process just as it did when before this court the first time.

4. The majority of the Supreme Court of California relies on the decisions of this court in *Beilan*⁷ and *Lerner*⁸ to justify its decision below. Neither of these decisions affects the validity of the position taken by the petitioner herein. Both *Beilan* and *Lerner* relied upon the Fifth Amendment. *Konigsberg* relied upon high moral principle and his responsibility as a citizen of a free society to resist encroachments upon the rights of free speech and association. Both *Beilan* and *Lerner* involved the relationship between employer and employee, the essence of which is the right to hire and fire unless specifically checked by statute. The State has not the right nor can it be permitted to exercise the right of an em-

⁷*Beilan v. Board of Education*, 357 U. S. 399.

⁸*Lerner v. Casey*, 357 U. S. 468.

ployer in its selection of prospective admittees to the Bar. The sole responsibility of the State is to measure the candidates educational and moral qualifications against established and announced principles which cannot include standards of political conformity. Finally in each of these cases, either Statute or decision within the states had equated failure to answer all questions with doubt of "reliability" or with "incompetency" as an employee. In California no prior case or statute or rule has ever established any such equation. To permit application of employer-employee principles to the relationship between the state and the lawyer would destroy the independence of the bar and with it one of the foundation stones of American democracy.

In this case no rational relationship exists between the political opinions, membership and/or associations, of petitioner and his suitability for the practice of law. To arbitrarily exclude petitioner from membership in the Bar because of his declination to answer questions not provided for by law, rule or otherwise (and which if so provided for would violate the First Amendment) denies petitioner due process of law and equal protection of the laws. This court has said that eligibility for public employment can be conditioned only on requirements which have a rational relationship to fitness⁹ and that the rights of a citizen to be free in the enjoyment of all his faculties, to be free to use them in all lawful ways, to live and work where he will, to earn his livelihood by any lawful calling¹⁰ are rights protected by the due proc-

⁹*Wieman v. Updegraf*, 344 U. S. 183.

¹⁰*Allgeyer v. Louisiana*, 165 U. S. 578, 589.

ess clause of the Fourteenth Amendment against State action. That these rights are not denied the applicant for admission to the Bar has already been demonstrated by this court in *Konigsberg v. State Bar* and *Schwartz v. Board of Bar Examiners*.¹¹

Special care must be taken to prevent arbitrary action of the state in denying otherwise qualified applicants admission to the Bar because of the vital need for a free and independent Bar so fundamental to the preservation of liberty and democracy.¹²

5. In the light of this fundamental freedom to choose a profession of one's own choice, which this court has considered as a right of property or liberty to be protected within the due process clause of the Fourteenth Amendment, clearly any political restraint placed upon the applicant for membership in the Bar of a State is one which must be viewed with great caution. As Mr. Justice Traynor in his dissenting opinion in this case stated,

"Inquiry on the issue of advocacy of the unlawful overthrow of the government is a greedy camel; it

¹¹353 U. S. 232.

¹²"We recognize the importance of leaving states free to select their own bars, but it is equally important that the State not exercise this power in an arbitrary or discriminatory manner nor in such way as to impinge on the freedom of political expression or association. A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important both to society and the bar itself that lawyers be un-intimidated—free to think, speak and act as members of an independent bar." (*Konigsberg v. State Bar*, 353 U. S. 252.)

does not easily take its leave. It has a way of moving on into the domain of lawful economic and political belief, speech and activity." (52 A. C. 799, 806.)

A large portion of the time of the legal profession is devoted to advocacy hostile to the position of the State itself. Such hostility appears in criminal proceedings, in proceedings before Administrative Boards and even, to be sure, in proceedings before the State Bar itself.

When one weighs in the constitutional balance the value to the State Bar of securing answers to the questions propounded in this case (and on the record of this case) against the dangers to society in permitting the establishment of political qualifications for prospective lawyers, it should be clear that the dangers far outweigh the benefit.

Certainly the legal profession does not fall within the unforeseen circumstances "permitting an exception" to the general principle that "if there is any fixed star in our constitutional constellation, it is that no official, higher or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion, or force citizens to confess by word or act their faith therein" (*West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 642).

The existence of the California code section dealing with advocacy of force and violence does not vitiate this principle for in this case petitioner offered to respond

to any and all questions relating to advocacy of force and violence,¹³

6. We have here no capricious momentary decision of an applicant declining to answer a particular question. We have instead a deeply principled decision of a mature applicant. This decision was taken at the first meeting of the Committee of Bar Examiners prior to the time that petitioner was represented by Counsel. The record indicates that the same position was taken in prior years at hearings under other circumstances. The record indicates that this position was taken in newspaper articles written by petitioner. The record indicates that petitioner based his position upon a deep and profound belief that all citizens must maintain their principles and conscience regardless of the personal effect of such decisions.

Petitioner stated:

"Mr. Chairman, the question, of course, is similar to the question asked me four years ago, though phrased somewhat differently, and while I think we all change somewhat in four years even at this age in our thinking, the basic principle that I established in that case and in those hearings that questions regarding one's political thinking are protected by the First Amendment and have no bearing whatsoever on one's moral character, have, I think, pretty well been determined by the Supreme Court opinion in

¹³There may be grave doubts as to the constitutionality of Section 6064.1 as an undue restriction on the First Amendment rights of applicants for the Bar. Since petitioner in this case chose to answer questions relating to this section, the constitutionality of this section need not be reached in this proceeding.

my case. And certainly having the Supreme Court vindicate my opinions and principles which are now in effect and in a sense the law of the land because of the Supreme Court opinion, I could hardly be expected at this point for expediency to give up principles that have been upheld by the highest court of our country."¹⁴ [Sept. Rec. p. 28].

7. On this record, with no evidence of wrong doing, no questions asked as to petitioner's good moral character or his advocacy of force and violence and without the respondent coming forward with some additional adverse information requiring answer by the petitioner, to require petitioner to reveal his political affiliations in violation of his principles and private conscience is to deprive petitioner of the right to follow his chosen calling or freedom of speech, press, assembly and conscience, contrary to due process clause of the Fourteenth Amendment. In effect such action says to the petitioner that in order to establish his good moral character to the satisfaction of respondent he must violate his own moral standards and become in his own eyes an immoral person.

¹⁴Konigsberg said further:

"That is what the Supreme Court ruling, and constitution says. You cannot and have no right, and it is my duty as a citizen to resist your doing this, what is to me an unconstitutional act. The thing always followed, and I remember distinctly in the Army orientation programs I had reference to in past hearings, when General Marshall and Eisenhower set up the programs said, 'It is our duty to educate soldiers to become good citizens.' They made it very clear and in many writings you have as part of the record that it isn't enough for Americans to accept the various privileges that citizenship grants to them. There are certain deep responsibilities that go with those privileges, and unfortunately most of us don't know them, don't accept them, and are not taught them."
[Sept. Rec. p. 25.]

Conclusion.

For these reasons the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

EDWARD MOSK,

Attorney for Petitioner.

SAMUEL ROSENWEIN,

Of Counsel.

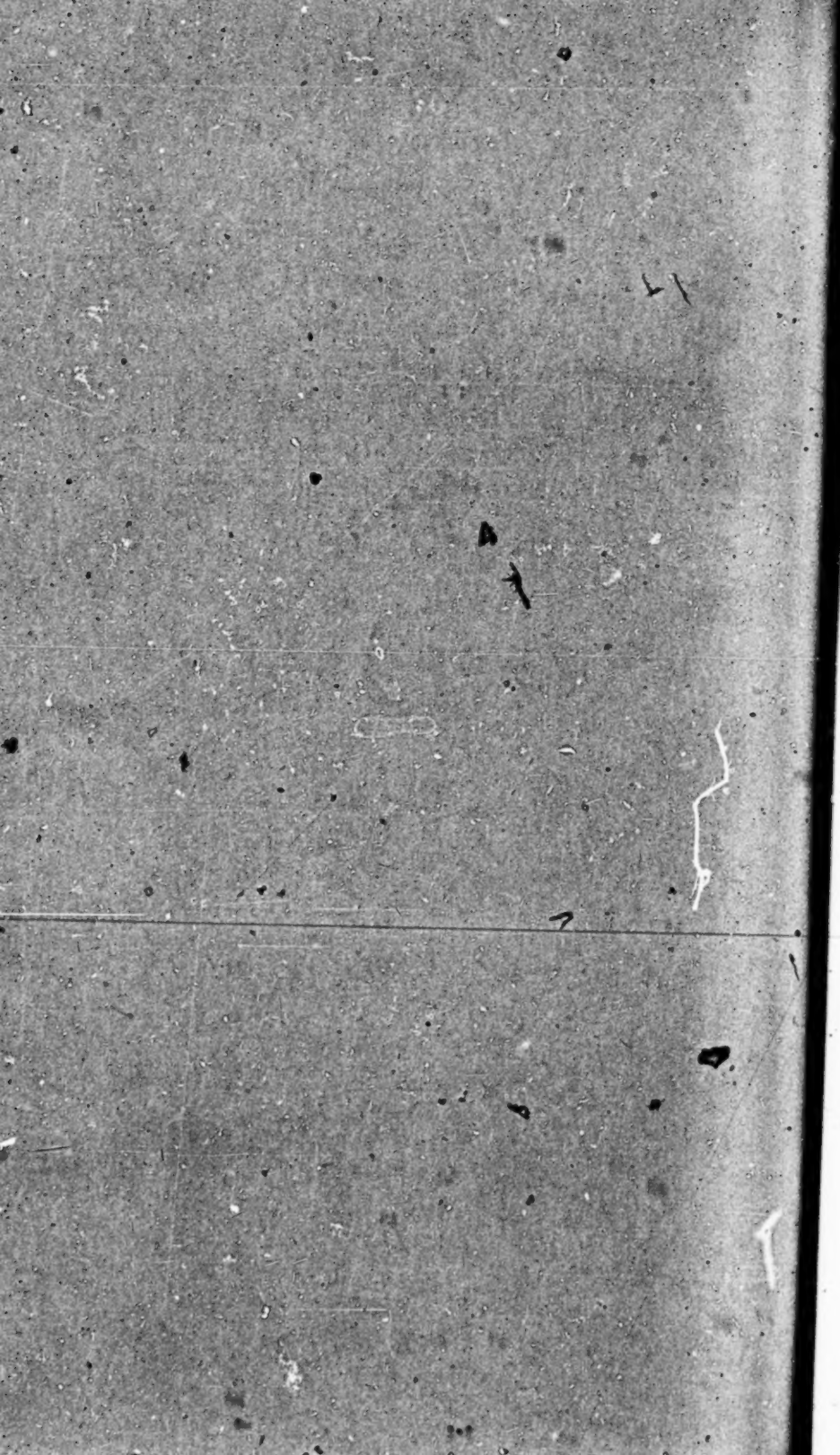


EXHIBIT A.

"THE COMMITTEE OF BAR EXAMINERS
of the State Bar of California

May 17, 1954

To: Raphael Konigsberg, Applicant

2446 Echo Park Avenue

Los Angeles 26, California

and

Edward Mosk, Esq., Applicant's Attorney

6305 Yucca Street

Hollywood 28, California

Pursuant to your request of February 11, 1954, the record in the matter of your application for certification to the Supreme Court for admission to practice law which was before the Southern Subcommittee, has been reviewed by the entire Committee. In addition, a further hearing was held before the Committee on March 13, 1954.

It is the Committee's determination that you have not sustained the burden of proof (1) that you are possessed of the good moral character required by Section 6060(c) of the State Bar Act, or (2) that you comply with the provisions of Section 6064.1 of said Act.

Your application is denied.

By order of the Committee of Bar Examiners.

/s/ GOSCOE O. FARLEY,

Goscoe O. Farley,

Secretary.

GOF:vz."

EXHIBIT B.

In the Supreme Court of the State of California.

Raphael Konigsberg, Petitioner vs. State Bar of California and the Committee of Bar Examiners of the State Bar of California, Respondents. L. A. No. 23266.

REPORT OF THE COMMITTEE OF BAR EXAMINERS

To the Honorable Phil S. Gibson, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the State of California:

I.

On July 10, 1957, the following order was made in the above entitled matter:

"Pursuant to mandate of the Supreme Court of the United States, it is ordered that the decision of this Court, filed April 20, 1955, be vacated, and the matter of admitting Raphael Konigsberg to the practice of law in all the courts of this State is referred to the Committee of Bar Examiners for further proceedings.

"CARTER, J. is of the opinion that the application of Raphael Konigsberg for admission to practice law in all of the courts of this State should now be granted.

(S) GIBSON, Chief Justice."

II.

Pursuant to this order, the following action was taken by the Committee of Bar Examiners in the matter of the application of Raphael Konigsberg for admission to practice law in the State of California:

(1) The Committee carefully considered the opinion of the Supreme Court of the United States in the matter entitled "Raphael Konigsberg, Petitioner, vs. State Bar of California and Committee of Bar Examiners of the State Bar of California," decided May 6, 1957, 353 US, 1 L ed 2d 810, 77 S Ct

(2) On September 21, 1957, at a meeting of the Committee in Los Angeles, at which all of the members of the Committee were present, the applicant appeared with his attorney, Edward Mosk, Esq. At this meeting the applicant's petition for admission was further heard by the Committee. An argument by the attorney for the applicant in support of the application for admission was also heard. The applicant was sworn and testified at the hearing. A witness produced by the applicant was sworn and testified. Written evidence was offered by the applicant, and was received by the Committee. The written record of all previous hearings by the Committee and one of its subcommittees on the application of Raphael Konigsberg for admission was incorporated as part of the record of the further hearing, by the stipulation of the applicant and by the Committee.

(3) The application was then submitted by the applicant and by his attorney.

III.

At the hearing on September 21, 1957, the Committee advised the applicant and his attorney that the refusal of applicant to answer material questions put to him by the Committee would obstruct the investigation by the Committee of applicant's qualifications for admission to practice law, with the result that the Committee would not be able to certify him for admission.

IV.

At the hearing on September 21, 1957, applicant refused to answer any questions put to him by the Committee concerning his past or present membership in or affiliation with the Communist Party.

V.

After further consideration of the entire record before it, the Committee finds and concludes:

(1) That the questions put to the applicant by the Committee concerning past or present membership in or

affiliation with the Communist Party are material to a proper and complete investigation of his qualifications for admission to practice law in the State of California.

(2) That the refusal of applicant to answer said questions has obstructed a proper and complete investigation of applicant's qualifications for admission to practice law in the State of California.

(3) That the refusal of applicant to answer said questions has obstructed a necessary and proper function of the Committee under Section 6046 and related sections of the Business & Professions Code of the State of California and under the Rules Regulating Admission to Practice Law in California adopted pursuant to Section 6047 and related sections of said Code.

(4) That in view of the foregoing, the Committee is unable to certify that applicant possesses the requisite qualifications or has fulfilled the requirements for admission to practice law in the State of California.

IN WITNESS WHEREOF, the Committee of Bar Examiners of the State Bar of California respectfully submits this report of its proceedings, on the reference made to it by the Supreme Court of the State of California on July 10, 1957, together with the transcript of the hearing before the Committee on September 21, 1957, and the exhibits submitted by the applicant at that hearing.

DATED: November 9, 1957.

SHARP WHITMORE
VINCENT H. O'DONNELL
GEORGE HARNAGEL, JR.
FORREST E. MACOMBER
GERALD P. MARTIN
THOMAS H. MC GOVERN
JOHN B. SURR

The Committee of Bar Examiners
of the State Bar of California
By SHARP WHITMORE

Chairman

EXHIBIT C.

Decision of the Supreme Court of California.

[L. A. No. 23266. In Bank. Oct. 16, 1959.]

Raphael Konigsberg, Petitioner, v. The State Bar of California *et al.*, Respondents.

Proceeding to review action of the Committee of Bar Examiners in refusing to certify petitioner for admission to practice law and application to the Supreme Court for admission to practice. Petition for review denied; application to Supreme Court denied:

Edward Mosk for Petitioner.

A. L. Wirin, Fred Okrand and Hugh R. Manes as Amici Curiae on behalf of Petitioner.

Frank B. Belcher, Robert D. Burch and Ralph E. Lewis for Respondents.

The Court.—Petitioner seeks review of the action of the Committee of Bar Examiners in refusing to certify him to this court for admission to practice law in California. Also, he has applied directly to this court for admission to practice.

The Committee of Bar Examiners is established by the Board of Governors of The State Bar of California pursuant to statutory authority. It conducts the bar examinations and certifies directly to this court those applicants for admission who fulfill the requirements of the code (Bus. & Prof. Code, §6046). This court may admit to practice any applicant so certified (Bus. & Prof. Code, §6064). An applicant who is refused certification may have the action of the committee reviewed by this court (Bus. & Prof. Code, §6066).

The code specifically provides (§6064.1) that "[n]o person who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, shall be certified . . . for admission. . . ."

In October, 1953, petitioner took and passed the written bar examination. Shortly before that examination, and on several later occasions, hearings were conducted by a subcommittee and the full Committee of Bar Examiners.

An ex-Communist testified that petitioner had attended meetings of a Communist Party unit in 1941. Petitioner offered much evidence of his satisfactory service in the Army during World War II, and of his good character and loyalty. The evidence of these hearings is reviewed in some detail in the several opinions in *Konigsberg v. State Bar*, 353 U. S. 252 [77 S. Ct. 722, 1 L. Ed. 2d 810]. Petitioner denied that he advocated overthrow of the government, but refused to answer any questions of committee members as to his membership in the Communist Party, asserting that such inquiries infringed rights guaranteed him by the First and Fourteenth Amendments to the Constitution of the United States.

The committee, by letter of May 17, 1954, advised petitioner that his application was denied on grounds that he had not sustained his burden of establishing that he (1) possessed the good moral character required by section 6060, subdivision (c), of the code, or (2) did not advocate unlawful overthrow of the government, the showing required by section 6064.1.

Petitioner thereupon sought review by this court. His petition was denied April 20, 1955, without opinion, by a divided court. The United States Supreme Court granted certiorari. On May 6, 1957, that court, with three justices

dissenting and one not participating, reversed and remanded the matter to this court "for further proceedings not inconsistent with this opinion" (Konigsberg v. State Bar, *supra*, 353 U. S. 252).

In doing so, the United States Supreme Court held (p. 273) that "there is no evidence in the record which rationally justifies a finding that Konigsberg failed to establish his good moral character or failed to show that he did not advocate forceful overthrow of the Government."

That court specifically pointed out (p. 259) that Konigsberg "was not denied admission to the California Bar simply because he refused to answer questions," and noted that he had not been told that he would be barred "just because he refused to answer relevant inquiries or because he was obstructing the Committee." In this connection it was said (p. 261) that "Serious questions of elemental fairness would be raised if the Committee had excluded Konigsberg simply because he failed to answer questions without first explicitly warning him that he could be barred for this reason alone. . . ."

The court stated (353 U. S. at pp. 261-262) that "If it were possible for us to say that the . . . [committee] had barred Konigsberg solely because of his refusal to respond to its inquiries into his political associations and his opinions about matters of public interest, then we would be compelled to decide far-reaching and complex questions relating to freedom of speech, press and assembly. There is no justification for our straining to reach these difficult problems when the . . . [committee] itself has not seen fit, at any time, to base its exclusion of Konigsberg on his failure to answer. If and when a State makes failure to answer a question an independent ground for exclusion from the Bar, then this Court, as the cases arise, will have to determine whether the exclusion is

constitutionally permissible. We do not mean to intimate any view on that problem here nor do we mean to approve or disapprove Konigsberg's refusal to answer the particular questions asked him."

Following the remand, this court vacated its prior order denying the petition for review and referred the entire matter, including the application for admission to the bar filed with us by petitioner after the decision of the United States Supreme Court, to the Committee of Bar Examiners for further proceedings. The committee conducted a hearing September 21, 1957.

At this hearing, the records of all previous hearings were incorporated by stipulation as part of the record, petitioner and a witness called by him were examined, and petitioner introduced letters recommending him as to character and loyalty. No evidence additional to that received in the 1953-1954 hearings was offered as reflecting on petitioner's loyalty or to show his advocacy of overthrow of the government. Thus a finding that he was not of good moral character or that he advocated overthrow of the government would be inconsistent with the decision of the United States Supreme Court upon the previous record.

At the 1957 hearing, however, the committee did fully advise petitioner and his counsel that his refusal to answer material questions put to him by it would obstruct its investigation of his qualifications to practice law, with the result that the committee would not be able to certify him for admission. It was made clear to him that questions concerning membership in the Communist Party were deemed material. Nonetheless, petitioner refused to answer any and all questions put to him by the committee concerning either past or present membership

in or affiliation with the Communist Party. The committee then found that Konigsberg had refused to answer its questions as to his membership in or affiliation with the Communist Party, that these questions were material to a proper determination of his qualifications, that his refusal to answer had obstructed the investigation which the statute requires, and that because of this refusal the committee is unable to certify him for admission.

It is this action which petitioner seeks to have reviewed. It differs materially from that of 1954. The committee action now before us contains no findings or conclusion that petitioner had failed to establish either his good moral character or his absence from advocacy of overthrow of the government.

Here it is the refusal to answer material questions which is the basis for denial of certification. Petitioner's refusal to answer is conceded. The issue is whether the questions are material. We think their materiality is clear. The committee is enjoined against certifying for admission to practice any person who "advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means." (Bus. & Prof. Code, §6064.1.) This provision clearly requires the committee to inquire as to such advocacy. The Congress (68 Stat. 775; 50-U. S. C. §841) and the California Legislature (Gov. Code, §1027.5) have declared that the Communist Party does advocate such overthrow. It follows that inquiry as to membership in that party is relevant and material in determining whether the proscribed advocacy exists. Petitioner refused to answer questions as to such membership at periods after the statutory proscription and after the legislative declarations of the purpose of the Communist Party. As we have noted, he

persisted in his refusal after being warned that such conduct would be deemed to require denial of his certification by the committee.

We are unable to distinguish this situation from that presented in *Beilan v. Board of Public Education*, 357 U. S. 399 [78 S. Ct. 1317, 1324, 2 L. Ed. 2d 1414, 1433]. There a school teacher refused to answer questions as to his loyalty. This refusal was made the basis for a finding of "incompetency." There, as here, there was no finding that the individual was in fact disloyal, but merely a finding that his refusal to answer questions pertinent to his loyalty revealed a lack of candor which constituted unfitness. Our case is somewhat stronger in that here a statute specifically requires the committee to certify that petitioner does not advocate overthrow of the government, and the questions as to party membership bears upon that issue. In *Beilan*, as here, there was no rule specifically providing that the failure to answer would be deemed ground for adverse action, but here, as there, the investigating authority gave clear warning that such a result would follow.

In its previous decision in this case, the United States Supreme Court held only that the evidence was insufficient to sustain a finding that petitioner is not of good moral character. The present record contains no additional evidence on that subject. However, the refusal to certify for admission is, on the present record, based wholly upon his refusal to answer pertinent questions. This ground was specifically left open in the earlier decision of that court and subsequent decisions have recognized this fact. (*Beilan v. Board of Public Education*, *supra*, p. 409; *Lerner v. Casey*, 357 U. S. 468, 478 [78 S. Ct. 1311, 1324, 2 L. Ed. 2d 1423, 1433].)

Determination whether petitioner was a member of the party which has been legislatively determined to advocate overthrow of the government was blocked by his refusal to answer. Such refusal likewise effectively prevented the committee from reaching the question whether, if he were such a member, his membership was knowing or innocent. The committee's refusal to recommend him for admission was based upon his refusal to answer inquiries about his relevant activities—not upon those activities themselves. Thus its refusal is fully justified under the rule of Beilan, which disposes of his claim that his constitutional rights have been infringed.

Petitioner does not question the constitutionality of the code section which prohibits certification of one who advocates unlawful overthrow of the government, nor of the federal and state legislative declarations that the Communist Party seeks such overthrow. Implicit in the statutory provision for review of the committee's refusal to certify an applicant is the power of this court to admit one not so certified. But to admit applicants who refuse to answer the committee's questions upon these subjects would nullify the concededly valid legislative direction to the committee. Such a rule would effectively stifle committee inquiry upon issues legislatively declared to be relevant to that issue. We cannot in good conscience deny the committee the right to inquire into a matter as to which it must certify. Whether the members of this court consider such a statute effective, practical or wise is irrelevant. We do not act in a legislative capacity. Rather, we recognize, and enforce legislation which is valid.

We adopt and approve the findings of the committee stated in the 1957 report. The petition for review and the application for admission to the bar are denied.

Gibson, C. J., deeming himself disqualified, did not participate.

Draper, J., sat pro tempore in place of the Chief Justice.

White, J., not having been a member of the court at the time of oral argument, did not participate.

Traynor, Acting P. J.—J dissent.

The United States Supreme Court has determined that Konigsberg was denied due process of law and equal protection of the laws on the ground that "the evidence does not rationally support the only two grounds upon which the Committee relied in rejecting his application for admission to the California Bar." (Konigsberg v. State Bar, 353 U. S. 252, 262 [77 S. Ct. 722, 1 L. Ed. 2d 810].) In its words, "there is no evidence in the record which rationally justifies a finding that Konigsberg failed to establish his good moral character or failed to show that he did not advocate forceful overthrow of the Government. Without some authentic reliable evidence of unlawful or immoral actions reflecting adversely upon him, it is difficult to comprehend why the State Bar Committee rejected a man of Konigsberg's background and character as morally unfit to practice law." (353 U. S. at 273.)

It declined to determine whether Konigsberg could be excluded from practice solely because of his refusal to answer questions, stating:

"There is nothing in the California statutes, the California decisions, or even in the Rules of the Bar Committee, which has been called to our attention, that suggests that failure to answer a Bar Examiner's inquiry is, *ipso facto*, a basis for excluding an applicant from the Bar, irrespective of how overwhelming is his showing of

good character or loyalty or how flimsy are the suspicions of the Bar Examiners. Serious questions of elemental fairness would be raised if the Committee had excluded Konigsberg simply because he failed to answer questions without first explicitly warning him that he could be barred for this reason alone, even though his moral character and loyalty were unimpeachable, and then giving him a chance to comply. In our opinion, there is nothing in the record which indicates that the Committee, in a matter of such grave importance to Konigsberg, applied a brand new exclusionary rule to his application—all without telling him that it was doing so.

"If it were possible for us to say that the Board had barred Konigsberg solely because of his refusal to respond to its inquiries into his political associations and his opinions about matters of public interest, then we would be compelled to decide far-reaching and complex questions relating to freedom of speech, press and assembly. There is no justification for our straining to reach these difficult problems when the Board itself has not seen fit, at any time, to base its exclusion of Konigsberg on his failure to answer. If and when a State makes failure to answer a question an independent ground for exclusion from the Bar, then this Court, as the cases arise, will have to determine whether the exclusion is constitutionally permissible. We do not mean to intimate any view on that problem here nor do we mean to approve or disapprove Konigsberg's refusal to answer the particular questions asked him." (353 U. S. at 260, 262, footnotes omitted.)

The United States Supreme Court reversed the judgment of this court and remanded the case "for further proceedings not inconsistent with this opinion." (353 U. S. at 274.) In view of the questions expressly left unde-

cided and the court's remand, it is my opinion that this court is not foreclosed by the United States Supreme Court's decision in this case from adopting and applying to Konigsberg a rule making failure to answer relevant questions with respect to his qualifications an independent ground for exclusion.

An applicant ordinarily has the burden of establishing his qualifications to practice law, and if he refuses to answer questions relevant to his qualifications, it is my opinion that this court is justified in denying him admission. Given the congressional and state legislative findings with regard to the Communist Party and the adjudications of guilt of its leaders of criminal advocacy, a question as to present or past membership in that party is relevant to the issue of possible criminal advocacy and hence to the applicant's qualifications.

Whatever its relevancy in a particular context, however, it is an extraordinary variant of the usual inquiry into crime, for the attendant burden of proof upon any one under question poses the immediate threat of prior restraint upon the free speech of all applicants. The possibility of inquiry into their speech, the heavy burden upon them to establish its innocence, and the evil repercussions of inquiry despite innocence would constrain them to speak their minds so noncommittally that no one could ever mistake their innocuous words for advocacy. This grave danger to freedom of speech could be averted without loss to legitimate investigation by shifting the burden to the examiners. Confronted with a *prima facie* case, an applicant would then be obliged to rebut it.

Such a procedure is logically dictated by *Speiser v. Randall*, 357 U. S. 513 [78 S. Ct. 1332, 1352, 2 L. Ed. 2d 1460]. The court there assumed that the state could deny

a tax exemption to one whose advocacy of the unlawful overthrow of the government was such that it could be punished as a crime. Mindful of the risks to free speech, however, it took care to hold that the state could not compel the taxpayer to prove his right to an exemption and that therefore an oath as to his innocence of unlawful advocacy could not be required. There may be differences of degree in the public interest in the fitness of the applicants for tax exemption and for admission to the Bar. Even though the state may have more at stake in the latter situation, it is not therefore freer to endanger free speech needlessly.

Inquiry on the issue of advocacy of the unlawful overthrow of the government is a greedy camel; it does not easily take its leave. It has a way of moving on into the domain of lawful economic and political belief, speech, and activity. It bears noting that such advocacy, whether it carries criminal or civil sanctions, is unlike crimes whose elements readily set them apart from legitimate activity. (Cf., *Dennis v. United States*, 341 U. S. 494 [71 S. Ct. 857, 95 L. Ed. 1137], with *Yates v. United States*, 354 U. S. 298 [77 S. Ct. 1064, 1 L. Ed. 2d 1356].) It also bears noting that such advocacy is not invariably associated with even active membership in the Communist Party. (*Yates v. United States*, *supra*.)

Such considerations as these may have led to the result in *Speiser v. Randall*, *supra*, 357 U. S. 513. In contrast an applicant for public employment can be required to state whether or not he is or was a member of the Communist Party, as a condition of his employment. (*Lerner v. Casey*, 357 U. S. 468 [78 S. Ct. 1311, 2 L. Ed. 2d 1423]; *Beilan v. Board of Public Education*, 357 U. S. 399 [78 S. Ct. 1317, 1324, 2 L. Ed. 2d 1414, 1433];

Steinmetz v. California State Board of Education, 44 Cal. 2d 816, 823 [285 P. 2d 617]; Pockman v. Leonard, 39 Cal. 2d 676, 685-687 [249 P. 2d 267].) Since an attorney is neither a public employee nor a taxpayer seeking an exemption, we do not know how the United States Supreme Court would resolve the constitutional issue here. Still, it has emphasized the importance of an independent Bar, and it has declared that petitioner's insistence on a constitutional right not to answer the questions here involved was not frivolous. (Konigsberg v. State Bar, 353 U. S. 252, 270, 273 [77 S. Ct. 722, 1 L. Ed. 2d 810].)

We need not resolve the constitutional question, for the Legislature has not directed that section 6064.1 of the Business and Professions Code* be enforced by compelling applicants to answer all questions relevant to the proscribed advocacy, and significantly, it has not required declarations of nonadvocacy from members of the Bar. It rests solely with this court, in its supervision of admissions to the Bar, to determine whether petitioner must answer the questions in issue. The question is not whether the Legislature might constitutionally impose such requirements but whether this court should impose them. There is no good reason for the court to do so, particularly when the Legislature has made no attempt to impose them on practicing attorneys.

The United States Supreme Court has determined that Konigsberg established his good moral character and that he did not advocate unlawful overthrow of the government. In the subsequent hearing there was no additional

*"No person who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law."

evidence adverse to Konigsberg. The committee did no more than make clear to him that his failure to answer would be an independent ground for not certifying him to this court. Konigsberg chose to stand on his constitutional objections, and as the United States Supreme Court pointed out, there is "nothing in the record which indicates that his position was not taken in good faith." (353 U. S. at 270.) If the committee had evidence that would support a finding of unlawful advocacy, it could compel Konigsberg to disclose political statements and associations in rebuttal or forego admission to the Bar. As the United States Supreme Court held, the committee made no prima facie case against Konigsberg, and we are bound by that finding. I would therefore grant the petition of Konigsberg and admit him to the Bar of this state.

PETERS, J.—I dissent.

The majority opinion disregards the law of this case as already established by the United States Supreme Court. (Konigsberg v. State Bar, 353 U. S. 252 [77 S. Ct. 722, 1 L. Ed. 2d 810].) It misconstrues the high court's opinion, and in particular misconstrues the legal effect of the order of that court remanding the case "for further proceedings not inconsistent with the opinion." (Konigsberg v. State Bar, 353 U. S. at p. 274.) The result is that, in my opinion applicant has been denied due process and equal protection.

The only issues before The State Bar in its first proceeding were whether the applicant was of good moral character and whether he advocated the forceful overthrow of the government of the United States. The burden was upon applicant to establish those facts. Lengthy hear-

ings were held. At these hearings applicant furnished overwhelming evidence of his good moral character and of the fact that he did not advocate and had never advocated the forceful overthrow of the government. He refused to answer any question as to his political affiliations. The State Bar refused to certify the applicant for admission on the ground that he had failed to sustain his burden on the two issues involved. The applicant sought review by this court. The petition was denied without opinion. The United States Supreme Court granted certiorari. That court then reversed this court and The State Bar and held that the applicant had sustained his burden of proof on the two key issues, and that on the showing made the applicant should have been certified for admission. The case was remanded "for further proceedings not inconsistent with this opinion." (*Königsberg v. State Bar*, 353 U. S. at p. 274.)

Following this remand this court, by a divided vote, instead of certifying the applicant, vacated its prior order and referred the case back to The State Bar for further proceedings. No showing was then or later made that any new evidence or facts had been discovered. The State Bar then held a so-called hearing. It was stipulated that the entire prior record should be introduced. The State Bar had admittedly hired an investigator to check off the applicant while the case had been pending in the courts, but it did not produce him or offer any evidence at all. The petitioner produced additional evidence in further support of his contentions that he was of good moral character and a loyal citizen. No question was asked him that had not been asked on the prior hearing, and no answer was given that had not already been given. The only difference between the two hearings was that at the

last one petitioner was warned that his failure to answer questions as to his political affiliations could be construed as lack of cooperation that would justify a denial of his application.

Thus petitioner, in the first hearing, presented overwhelming evidence that he was of good moral character and a loyal citizen. The highest court in the land so held. Then, on precisely that same record, the record that the high court had held demonstrated that the applicant had sustained his burden as a matter of law, the majority of this court have held that The State Bar properly denied certification because this time applicant was warned that the failure to answer certain questions would be construed as lack of cooperation. How many times does the issue of whether applicant possesses a good moral character and is a loyal citizen have to be tried? Those were the issues presented. Having sustained his burden as to those issues, on what rational theory can it be held that The State Bar, at this late date, with no new evidence, can offer a new and different excuse for denying certification? When does this litigation come to an end? I had always thought, until I read the majority opinion in this case, that our system of law was predicated on the fundamental theory that, when issues between litigants have once been determined, they cannot be relitigated. I had always thought that litigants were required to raise all relevant issues in one proceeding. I had assumed that parties cannot litigate their case piecemeal.

The majority purport to find sanction for this violation of fundamental principles in the order of the United States Supreme Court, heretofore quoted, remanding the case "for further proceedings not inconsistent with this opinion" (*Konigsberg v. State Bar*, 353 U. S. at p. 274).

and in several sentences contained in the opinion. The majority do not quote all the relevant language. At page 259 of the high court opinion appears the following:

"In Konigsberg's petition for review to the State Supreme Court there is no suggestion that the Committee had excluded him merely for failing to respond to its inquiries. Nor did the Committee in its answer indicate that this was the basis for its action. After responding to Konigsberg's allegations, the Bar Committee set forth a defense of its action which in substance repeated the reasons it had given Konigsberg in the formal notice of denial for rejection his application."

"There is nothing in the California statutes, the California decisions, or even in the Rules of the Bar Committee, which has been called to our attention, [and there is still nothing in such statutes, decisions or rules] that suggests that failure to answer a Bar Examiner's inquiry is *ipso facto*, a basis for excluding an applicant from the Bar, irrespective of how overwhelming is his showing of good character or loyalty or how flimsy are the suspicions of the Bar Examiners. Serious questions of elemental fairness would be raised if the Committee had excluded Konigsberg simply because he failed to answer questions without first explicitly warning him that he could be barred for this reason alone, even though his moral character and loyalty were unimpeachable, and then giving him a chance to comply. In our opinion, there is nothing in the record which indicates that the Committee, in a matter of such grave importance to Konigsberg, applied a brand new exclusionary rule to his application—all without telling him that it was doing so."

"If it were possible for us to say that the Board had barred Konigsberg solely because of his refusal to respond

to its inquiries into his political associations and his opinions about matter of public interest, then we would be compelled to decide far-reaching and complex questions relating to freedom of speech, press and assembly. There is no justification for our straining to reach these difficult problems when the Board itself has not seen fit, at any time, to base its exclusion of Konigsberg on his failure to answer. If and when a State makes failure to answer a question an independent ground for exclusion from the Bar, then this Court, as the cases arise, will have to determine whether the exclusion is constitutionally permissible. We do not mean to intimate any view on that problem here nor do we mean to approve or disapprove Konigsberg's refusal to answer the particular questions asked him."

The majority opinion interprets the remanding order and the above-quoted portion of the opinion as a direction, or at least an authorization, to return the proceeding to The State Bar to permit it to refuse certification solely on the ground that Konigsberg had refused to cooperate by refusing to answer questions about his political affiliations. This is not a correct interpretation of the remanding order. Obviously, what the Supreme Court meant by the quotation, *supra*, is that California has never adopted a statute or a rule making failure to answer *ipso facto*, a ground for refusal to certify, and that The State Bar could not properly contend that on the record there involved such was a valid ground for refusal to certify. Without such a statute or rule the point could not be urged. Certainly the Supreme Court could not have meant that without a statute or rule the Board of Bar Examiners could create a "rule" simply by warning Konigsberg that the effect of refusal to answer would be to cause the board to refuse his certification. Such a warning, com-

ing four years after Konigsberg first appeared before the committee, does not comply with rules of "elemental fairness" as required by the Supreme Court of the United States.

Rules for admission to practice law are not to be adopted in this cavalier fashion. The only rules passed by the Legislature provide that the applicant must be of good moral character, and must not advocate the forceful overthrow. There is no rule about failing to answer. If California is to adopt a new rule relating to failure to answer questions, such rule or statute should be adopted in the manner rules and statutes are normally adopted. Here the so-called "rule" was adopted in the middle of a proceeding as an afterthought simply to justify the actions of the Bar Committee in refusing to certify Konigsberg for admission. To sanction such a procedure is not only unfair but, in my opinion, a denial of due process and equal protection.

After the careful review of the evidence made by the United States Supreme Court, and after holding that such evidence did not justify the refusal to certify, when the high court remanded the case "for further proceedings not inconsistent with this opinion" it meant, and must have meant, that this court was to grant the petition of Konigsberg, unless new facts relating to character or loyalty were produced. Any other action was necessarily inconsistent with the opinion of the Supreme Court of the United States.

Of course, had The State Bar made a showing that after the first hearings and while the case was on appeal it had discovered new evidence that Konigsberg was not of good moral character and not a loyal citizen, the case could have been remanded to The State Bar to hear and

consider that evidence. But no such showing was made and no such evidence produced.

Thus the majority opinion, in my view, violates the remand order of the United States Supreme Court.

In addition, the majority opinion also violates the law of the case as established by the high court. As already pointed out, all of the questions Konigsberg refused to answer were addressed to the inquiry as to whether he was or had been a member of the Communist Party. The only legitimate purpose behind those questions was to ascertain whether Konigsberg advocated or had ever advocated the forceful overthrow of the government of the United States. Konigsberg answered, and answered frankly, every question directed to that subject. The State Bar produced no evidence to the contrary. In discussing the answers given by Konigsberg, the United States Supreme Court (*Konigsberg v. State Bar*, 353 U. S. 252, at p. 271) had this to say: "Konigsberg repeatedly testified under oath before the Committee [and he gave similar answers at the last hearing] that he did not believe in nor advocate the overthrow of any government in this country by any unconstitutional means. For example, in response to one question as to whether he advocated overthrowing the Government he emphatically declared: 'I answer specifically I do not, I never did or never will.' No witness testified to the contrary. As a matter of fact, many of the witnesses gave testimony which was utterly inconsistent with the premise that he was disloyal. And Konigsberg told the Committee that he was ready at any time to take an oath to uphold the Constitution of the United States and the Constitution of California."¹

¹This is the oath required by California law—Business and Professions Code, section 6067.

There is no evidence that Konigsberg now or at any other time has ever advocated the forceful overthrow, or ever belonged to any association that he knew so advocated. The evidence is all to the contrary. The United States Supreme Court after reviewing the evidence then before it, and no other evidence has been produced on the issue, had this to say (Konigsberg v. State Bar, 353 U. S. 252, at p. 273): "We recognize the importance of leaving States free to select their own bars, but it is equally important that the State not exercise this power in an arbitrary or discriminatory manner nor in such way as to impinge on the freedom of political expression or association. A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important both to society and the bar itself that lawyers be unintimidated—free to think, speak, and act as members of an Independent Bar. In this case we are compelled to conclude that there is *no evidence in the record which rationally justifies a finding that Konigsberg failed to establish his good moral character or failed to show that he did not advocate forceful overthrow of the Government.* [Italics added.] Without some authentic reliable evidence of unlawful or immoral actions reflecting adversely upon him, it is difficult to comprehend why the State Bar Committee rejected a man of Konigsberg's background and character as morally unfit to practice law. As we said before, the mere fact of Konigsberg's past membership in the Communist Party, if true, without anything more, is not an adequate basis for concluding that he is disloyal or a person of bad character. A lifetime of good citizenship is worth very little if it is so frail that it cannot withstand the suspicions which apparently were the basis for the Committee's action."

It must be remembered that at the various hearings Konigsberg produced evidence of 54 persons who testified in detail about almost every phase of his adult life. Not one word or one bit of evidence was produced to show that Konigsberg had ever committed a wrongful, improper or disloyal act. The evidence was all to the contrary. Applicant himself testified that he did not and never had advocated the forceful overthrow. The United States Supreme Court was much impressed by this testimony. An examination of that court's opinion will demonstrate to a certainty that it held that, on the record before it, and the present record is stronger in this respect, Konigsberg had affirmatively demonstrated that he possessed a good moral character, and was a loyal citizen. This is the law of this case.

The high court stated that the issue before it was "Does the evidence in the record support any reasonable doubts about Konigsberg's good character or his loyalty to the Governments of the State and Nation? . . .

"Konigsberg claims that he established his good moral character by overwhelming evidence and carried the burden of proving that he does not advocate overthrow of the Government. He contends here, as he did in the California court, that there is no evidence in the record which rationally supports a finding of doubt about his character or loyalty. . . . If this is true, California's refusal to admit him is a denial of due process and of equal protection of the laws because both arbitrary and discriminatory. After examination of the record, we are compelled to agree with Konigsberg that the evidence does not rationally support the only two grounds upon which the Committee relied in rejecting his application . . ." (353 U. S. at p. 262.)

Then, after referring to the evidence produced by Konigsberg on the issue of his character, the court stated (353 U. S. at p. 265): "Other witnesses testified to Konigsberg's belief in democracy and devotion to democratic ideas, his principled convictions, his honesty and integrity, his conscientiousness and competence in his work, his concern and affection for his wife and children and his loyalty to the country. These, of course, have traditionally been the kind of qualities that make up good moral character. The significance of the statements made by these witnesses about Konigsberg is enhanced by the fact that they had known him as an adult while he was employed in responsible professional positions. Even more significant, not a single person has testified that Konigsberg's moral character was bad or questionable in any way."

After referring to evidence of Konigsberg's background the court refers to this evidence of character as "Konigsberg's forceful showing of good moral character" and comments on the fact that "there is no evidence that he has ever been convicted of any crime or has ever done anything base or depraved." the high court refers to certain arguments of The State Bar and concludes "When these items are analyzed, we believe it cannot rationally be said that they support substantial doubts about Konigsberg's moral fitness to practice law." (353 U. S. at p. 266.) This is the law of this case.

Then, after analyzing all the evidence on this issue relied upon by The State Bar, the court stated: "On the record before us, it is our judgment that the inferences of bad moral character which the Committee attempted to draw from Konigsberg's refusal to answer questions about

his political affiliations and opinions are unwarranted." 353 U. S. at p. 270.)

After discussing at length the evidence that The State Bar relied upon to show possible advocacy of forceful overthrow, the United States Supreme Court concluded with the statement already quoted but which bears repetition: "In this case we are compelled to conclude that there is no evidence in the record which rationally justifies a finding that Konigberg failed to establish his good moral character or failed to show that he did not advocate forceful overthrow of the Government. . . . It is difficult to comprehend why the State Bar Committee rejected a man of Konigsberg's background and character as morally unfit to practice law. . . . A lifetime of good citizenship is worth very little if it is so frail that it cannot withstand the suspicions which apparently were the basis for the Committee's action." (353 U. S. at p. 273.) This, too, is the law of this case.

Thus it is the law of this case that the record before the Supreme Court of the United States established, as a matter of law, that applicant, without conflict, proved that he possessed a good moral character and was a loyal citizen. The present record is even stronger in this respect. If it be taken as established as a matter of law that applicant possesses such a character and is loyal, the two statutory requirements involved, of what relevancy is it that he refused to answer questions as to his political affiliations? The holding that mere refusal to answer the questions justified refusing certification, under the circumstances here, necessarily violates the law of the case as established by the high court.

Stated another way, if the record before the high court established these facts as a matter of law, the record

now before this court also, necessarily, shows these facts as a matter of law. Therefore, it is a necessary conclusion from the majority opinion that although Konigsberg affirmatively sustained the burden of showing by very substantial and uncontradicted evidence that he possesses a good moral character and is a loyal citizen, and although the record will support no other conclusion, he may be denied admission solely because he refused to cooperate by answering questions about his political affiliations. Thus, although the petitioner has affirmatively sustained his burden of proof, and there is no evidence or inference from the evidence to the contrary, the majority hold that he may be denied relief solely because he refused to answer questions as to his political affiliations.

For these reasons, and also for the reasons stated in the dissenting opinion of Mr. Justice Traynor, I would grant the petition of Konigsberg and admit him to the bar of this state.

EXHIBIT D.

1. Constitution of the United States.

A. The First Amendment to the Constitution of the United States provides:

"Congress shall make no law . . . abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

B. Section 1 of the Fourteenth Amendment to the United States Constitution provides in part:

" . . . no state shall . . . deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

2. California statutes.

Admission to the Bar in the State of California is governed by the provisions of the California Business and Professional Code. The principal sections involved are:

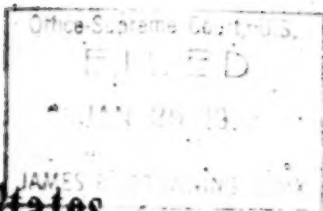
A. "Section 6060. QUALIFICATIONS FOR APPLICANTS: To be certified to the Supreme Court for admission and a license to practice law, a person . . . shall:

"(c) be of good moral character. . . ."

B. "Section 6064.1 ONE ADVOCATING THE OVERTHROW OF GOVERNMENT NOT TO BE ADMITTED:

"No person who advocates the overthrow of the government of the United States or this State by force, violence, or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law. (added by Stats. 1951, Ch. 179, p. 432, Sec. 1.)"

FILE COPY



IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. ~~661~~ 28

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA AND THE COMMITTEE OF
BAR EXAMINERS OF THE STATE OF CALIFORNIA,

Respondents.

MOTION FOR LEAVE TO USE TRANSCRIPT
OF PRIOR RECORD.

EDWARD MOSK,

6305 Yucca Street,

Hollywood 28, California.

Attorney for Petitioner.

SAMUEL ROSENWEIN,

Of Counsel.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

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RAPHAEL KONIGSBERG,

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vs.

THE STATE BAR OF CALIFORNIA and THE COMMITTEE OF
BAR EXAMINERS OF THE STATE OF CALIFORNIA,
Respondents.

**MOTION FOR LEAVE TO USE TRANSCRIPT
OF PRIOR RECORD.**

*To the Honorable Justices of the Supreme Court of the
United States:*

I

Petitioner Raphael Konigsberg has heretofore filed a
Petition for a Writ of Certiorari to the Supreme Court
of the State of California in the above entitled matter.

II

The Record below has heretofore been transferred from
the Supreme Court of California to the Clerk of the Su-
preme Court of the United States.

III

A portion of the record transmitted includes the transcript of the Hearing before the Committee of Bar Examiners held on September 21, 1957. At the said hearing the transcript of record before the Supreme Court of the United States in the matter of *Raphael Konigsberg, Petitioner, v. The State Bar of California and the Committee of Bar Examiners of the State of California*, October Term, 1956, No. 5, was incorporated by reference thereto and was not again transcribed in the record in its entirety.

Petitioner therefore asks leave of the Court to use the transcript of record, as printed for the matter in the October Term, 1956, No. 5, as a part of the record of this matter on the present Petition for Certiorari.

Respectfully submitted,

EDWARD MOSK,

Attorney for Petitioner.

SAMUEL ROSENWEIN,

Of Counsel.

FILE COPY

Office-Supreme Court, U.S.

FILED

FEB 16 1960

JAMES R. BROWNING, Clerk

IN THE
Supreme Court of the United States

October Term, 1959.

No. ~~66~~ 28

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and the COMMITTEE OF
BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI.

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RALPH E. LEWIS,
ROBERT D. BURCH,

Of Counsel.



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IN THE
Supreme Court of the United States

October Term, 1959.

No. 661.

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and the COMMITTEE OF
BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

**RESPONDENTS' BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI.**

I.

Questions Presented.

1. Is the denial by the California Supreme Court of the petitioner's application for admission to the Bar on the ground that he refused to disclose his relationship with the Communist Party in the present and recent past consistent with the decision of this Court in *Konigsberg v. State Bar*, 353 U. S. 252?

2. May a writ of certiorari be issued to retry the issue whether Mr. Konigsberg is qualified to practice law in the State of California.

3. Has any substantial federal question been raised regarding the adequacy of the warning given to petitioner that his continued refusal to disclose his relationship with the Communist Party in the present and the recent past

would result in the denial of his application for admission to the Bar?

4. Does the denial by the California Supreme Court of the petitioner's application for admission to the Bar on the ground that he refused to disclose his relationship with the Communist Party in the present and the recent past raise any substantial federal question which has not previously been decided by this Court where the questions which he refused to answer were material to a proper investigation and determination of his qualifications for admission to the California Bar?

II.

Constitutional and Statutory Provisions Considered.

The Fourteenth Amendment provides:

"* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The basic act governing admission to the bar in the State of California is to be found in the Business and Professions Code of the State of California. The principal sections involved are Sections 6060 and 6064.1. These sections read as follows:

"Section 6060. QUALIFICATIONS FOR APPLICANTS:

"To be certified to the Supreme Court for admission and a license to practice law, a person who does not comply with section 6062 shall:

- (a) Be a citizen of the United States.
- (b) Be of the age of at least 21 years.

- (c) Be of good moral character.
- (d) Have been a bona fide resident of this State for at least three months immediately prior to the date of his final bar examination."

"Section 6064.1. ONE ADVOCATING THE OVERTHROW OF GOVERNMENT NOT TO BE ADMITTED:

"No person who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law."

III.

Statement of the Case.

In 1953 the petitioner, Raphael Konigsberg, applied for admission to the Bar of the State of California. Thereafter hearings were conducted by the Southern Subcommittee of the Committee of Bar Examiners and by the full Committee to determine whether petitioner could be certified to the California Supreme Court as qualified for admission.

At these hearings, petitioner presented evidence of his qualifications. He was confronted with testimony that he was once a member of the Communist Party and with other evidence which raised doubts in the mind of the Subcommittee and the Committee whether they could properly certify him for admission. He was asked, but consistently refused to answer, whether he was, or had been, a member of the Communist Party of the United States.

The Committee determined that the petitioner had not sustained the burden of proof that he was possessed of a good moral character and that he did not advocate the possible overthrow of the government.

The Supreme Court of California refused to review this determination, with three Judges voting for a hearing.

On certiorari, this Court found that there was insufficient evidence in the record rationally to support a determination that petitioner lacked good moral character or advocated the violent overthrow of the government. The right of the State to exclude Mr. Konigsberg from practice because he refused to divulge information regarding his background to those charged with investigating his qualifications, after due warning of the possible consequences of his refusal, was expressly left open by the decision of this Court.

After remand, the Supreme Court of California referred the matter to the Bar Examiners for further investigation and evaluation. Pursuant to the order of that Court, the Committee conducted a further hearing on September 21, 1957.

At this hearing, the petitioner was advised that it was the statutory duty of the Committee to conduct a thorough inquiry into his eligibility for admission to the Bar and that it was his duty to be completely candid and frank with the Committee. He was exhaustively warned, both before and after his examination, of the possible detrimental consequences to a favorable consideration of his application which would ensue from his refusal to answer questions relating to his membership in the Communist Party:

"I have generally outlined to Mr. Mosk the scope of the proposed hearing today. I should like to point out to Mr. Konigsberg, as well as to Mr. Mosk, that the functions of the Committee of Bar Examiners are really two-fold: First to investigate in connection with the requirements for admission to practice set

forth in the Business and Professions Code; and second to make determinations. *As a result of our two-fold purpose, particularly our function of investigation, we believe it will be necessary for you, Mr. Konigsberg, to answer our material questions or our investigation will be obstructed. We would not then as a result be able to certify you for admission.* If you have questions we shall certainly be happy to have your counsel or you address them to us. We should certainly make every effort to limit our questions to those which are material ones.

* * * * *

"Mr. Konigsberg, as indicated at the beginning of this proceeding, the Committee is really charged with two functions, one to investigate, and one to determine. Your counsel has asked the Committee, asked me, for an indication as to the scope and purpose of this hearing. I indicated to him what the scope and purpose is, and as a result you are aware of it. We are engaged in the function of investigating matters which we are charged with the responsibility of determining under the law of the State of California. We have every intention and desire of carrying out that investigative duty consistent with the constitutional protections and freedoms that the United States and the California constitutions provide. We still have an obligation to investigate. I believe that we are charged with this responsibility as it might apply to your application for admission. That investigation can be carried out in a number of ways. In connection with determining whether or not you meet the minimum standards to practice law as far as the knowledge of the subject of law is concerned, we have asked you questions in an examination, and

you have given us answers. In connection with other requirements for admission to practice, as set forth in the Business and Professions Code of California, we have asked you to fill out an application, which you have done. Also as part of our investigation and your satisfying each and all of these requirements to practice law we have called you before the Committee. We have asked questions of you. We are merely now engaging in that investigation which we have engaged in by having hearings, by having you fill out applications, and by asking you to take an examination before. Now, this is part of that same function. * * *

* * * * *

"Mr. Konigsberg, I think you will recall that I initially advised you a failure to answer our material questions would obstruct our investigation and result in our failure to certify you. With this in mind do you wish to answer any of the questions which you heretofore up to now have refused to answer?" (Emphasis added.) [Sept. Rec. pp. 4, 32, 39.]¹

The Committee also explained to the petitioner the pertinency of questions regarding his membership in the Communist Party to its inquiry into his qualifications for admission to the Bar.

"If you answered the question, for example, that you had been a member of the Communist Party during some period since 1951 or that you were presently a member of the Communist Party, the

¹The transcript of the hearing of September 21, 1957, will be cited as "Sept. Rec." and in conformity with the designation employed in the petitioner's brief.

Committee would then be in a position to ask you what acts you engaged in to carry out the functions and purposes of that party, what the aims and purposes of the party were, to your knowledge, and questions of that type. You see by failing to answer the initial question there certainly is no basis and no opportunity for us to investigate with respect to the other matters to which the initial question might very well be considered preliminary. }

* * * * *

"Mr. Mosk, you realize that if Mr. Konigsberg had answered the question that he refused to answer, an entirely new area of investigation might be opened up, and this Committee might be able to ascertain from Mr. Konigsberg that perhaps he is now and for many years past has been an active member of the Communist Party and from finding out who his associates were in that enterprise we might discover that he does advocate the overthrow of this government by force and violence. I am not saying that he would do that, but it is a possibility, and we don't have to take any witness' testimony as precluding us from trying to discover if he is telling the truth.

* * * [Sept. Rec. pp. 42, 46-47.]

Nevertheless, petitioner refused to divulge whether he has been a member of the Communist Party at any time since 1951, *or whether he is presently a member of such party* [Sept. Rec. pp. 34-35.] In each instance, the petitioner predicated his refusal to answer upon his rights under the First Amendment and Article I, Section 1, of the California Constitution. [Sept. Rec. pp. 34-35, lines 25-26, 1-2.]

The full sweep of Mr. Konigsberg's ideas regarding the permissible limits of an inquiry by those charged with examining the qualifications of applicants for admission to the Bar is revealed by his comments at the hearing.

"CHAIRMAN WHITMORE: How can we make a determination with respect to the nature of your activities with the Communist Party if you were, assuming you were, a member if we have no basis for questioning you concerning them? You won't answer our question as to whether or not you were ever a member. That question in that respect would be a preliminary question, would it not?

A. You have asked me if I advocate the overthrow of the government, if I committed any illegal acts. I answered gladly. I never have, I don't now, and I never will. I am incapable of doing it.

MR. O'DONNELL: Suppose we don't believe you, don't you think we are entitled to ask you as to your association with the Communist Party and your membership with the Communist Party as part of our examination?

A. *You are entitled to ask me only with respect to phases of illegal activity. You cannot ask me or any citizen about his activities that are legal, that are protected under the First Amendment, under the part of normal civic activity. * * ** (Emphasis added.) [Sept. Rec. pp. 41-42.]

In other words, the substance of Mr. Konigsberg's position is: You may ask me if I have committed any crime in general or if I have committed a specific crime. However, you may not make any inquiry regarding activity which is not *per se* illegal. If I do not admit to criminal activity, or if you cannot prove such activity on

my part, I am entitled to admission to the Bar, although I have refused to reveal to you important areas of my background.

The Committee made the following findings in its report to the Supreme Court of California:

"(1) That the questions put to the applicant by the Committee concerning past or present membership or affiliation with the Communist Party are material to a proper and complete investigation of his qualifications for admission to practice law in the State of California.

(2) That the refusal of applicant to answer said questions has obstructed a proper and complete investigation of applicant's qualifications for admission to practice law in the State of California.

(3) That the refusal of applicant to answer said questions has obstructed a necessary and proper function of the Committee under Section 6046 and related sections of the Business & Professions Code of the State of California and under the Rules Regulating Admission to Practice Law in California adopted pursuant to Section 6047 and related sections of said Code.

(4) That in view of the foregoing, the Committee is unable to certify that applicant possesses the requisite qualifications or has fulfilled the requirements for admission to practice law in the State of California."

The Supreme Court of California reviewed the entire record, adopted the findings of the Committee and refused to admit the petitioner to the practice of law.

Konigsberg v. State Bar (1959), Cal. 2d
52 A. C. 799, 344 P. 2d 777.

IV.

Reasons Why Certiorari Should Not Be Granted.

A. The Denial of Mr. Konigsberg's Application for Admission to the California Bar by the California Supreme Court Is Completely Consistent With the Decision of the United States Supreme Court in *Konigsberg v. State Bar*, 353 U. S. 252.

A single issue on the merits was previously decided:

"We now pass to the issue which we believe is presented in this case: Does the evidence in the record support any reasonable doubts about Konigsberg's good character or his loyalty to the Governments of State and Nation?"

Konigsberg v. State Bar, 353 U. S. 252, 262.

The question whether Mr. Konigsberg could be denied admission to the State Bar of California solely by reason of his refusal to answer questions which were relevant and material to a determination of his eligibility for admission to practice was determined not to be before this Court and was not passed on by it:

"He was not denied admission to the California Bar simply because he refused to answer questions.

"In Konigsberg's petition for review to the State Supreme Court there is no suggestion that the Committee had excluded him merely for failing to respond to its inquiries. Nor did the Committee in its answer indicate that this was the basis for its action.

* * * * *

"If it were possible for us to say that the Board had barred Konigsberg solely because of his refusal to respond to its inquiries into his political associa-

tions and his opinions about matters of public interest, then we would be compelled to decide far-reaching and complex questions relating to freedom of speech, press and assembly. There is no justification for our straining to reach these difficult problems when the Board itself has not seen fit, at any time, to base its exclusion of Konigsberg on his failure to answer. If and when a State makes failure to answer a question an independent ground for exclusion from the Bar, then this Court, as the cases arise, will have to determine whether the exclusion is constitutionally permissible. *We do not mean to intimate any view on that problem here nor do we mean to approve or disapprove Konigsberg's refusal to answer the particular questions asked him.*" (Emphasis added.)¹

Konigsberg v. State Bar, 353 U. S. 252, 261, 262.

This Court then held that the evidence in the record did not justify a determination that Mr. Konigsberg was not a man of good moral character or that he advocated the violent overthrow of the government. The judgment of the California Supreme Court was thereupon reversed, and the case "remanded for further proceedings not inconsistent with this opinion." (*Konigsberg v. State Bar*, 353 U. S. 252, 274.)

The language used indicated, and we submit that it was the intention of this Court, that the case should be returned to the jurisdiction of the State of California for

¹This Court has reaffirmed in its subsequent decisions of *Beilan v. Board of Education* (1958), 357 U. S. 399, 409, and *Lerner v. Casey* (1958), 357 U. S. 468, 478, that it did not intend to and did not pass on these questions.

such further proceedings as were necessary and proper under the State law to determine whether Mr. Konigsberg should be admitted to the California Bar.

The Supreme Court of California ordered the matter referred to the Committee of Bar Examiners for further proceedings in the light of the opinion of this Court. Pursuant to this order, the Committee conducted a hearing and issued its Report to the Supreme Court of California. Said report is attached as Exhibit A. As set forth in more detail in said Report, the Committee determined, without dissent, that Mr. Konigsberg's refusal to answer material questions had obstructed a proper and complete investigation of his qualifications for admission to practice law in the State of California and that it was therefore unable to certify him for admission to practice.

The California Supreme Court determined that petitioner could and should be denied admission to the California Bar on this ground. Justice Traynor, one of the two dissenting judges, agreed that Mr. Konigsberg could properly be denied admission on this ground and differed only on the question whether such action should be taken:

"The United States Supreme Court reversed the judgment of this court and remanded the case 'for further proceedings not inconsistent with this opinion.' (353 U. S. at 274.) In view of the questions expressly left undecided and the court's remand, it is my opinion that this court is not foreclosed by the United States Supreme Court's decision in this case from adopting and applying to Konigsberg a rule making failure to answer relevant questions with

respect to his qualifications an independent ground for exclusion."

Kouigsberg v. State Bar (1959), Cal. 2d,
52 A. C. 799, 805, 344 P. 2d 777, 781. |
(Opinion of Traynor, J.)

We respectfully submit that:

(1) It was not the intention of this Court to foreclose further proceedings, but rather to remand for such further proceedings and decision as were appropriate under the law and procedures of the State of California; and

(2) The action taken by the Committee of Bar Examiners and the State Supreme Court are entirely consistent with the order of this Court.

B. It Is the Duty of the Committee of Bar Examiners and the Supreme Court of the State of California to Determine Whether an Applicant Is Qualified to Practice Law Within the State. Petitioner Is Not Entitled to a Writ of Certiorari Merely to Re-try the Issue of His Qualifications.

"To be certified to the Supreme Court for admission and a license to practice law, a person who does not comply with section 6062, shall:

"(a) Be a citizen of the United States.

"(b) Be of the age of at least 21 years.

"(c) Be of good moral character.

"(d) Have been a bona fide resident of this State for at least three months immediately prior to the date of his final bar examination. . . ."

Calif. Bus. & Prof. Code, § 6060.

"* * * No person who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law."

Calif. Bus. & Prof. Code, § 6064.1.

Under California law, the California Supreme Court is entrusted with the ultimate determination of whether an applicant is qualified for admission to the Bar.

In re Lavine (1935), 2 Cal. 2d 324, 327-328, 41 P. 2d 161, 162.

In re Hallinan (1954), 43 Cal. 2d 243, 253-254, 272 P. 2d 768, 775.

At the prior hearing before this Court, there was no written opinion of the California Supreme Court to serve as a guide to the California law and to the action taken. Since the reversal by this Court there has been a new hearing by the Committee of Bar Examiners and the California Supreme Court has reviewed the entire record and has heard the arguments of the parties. It has determined that under California law:

(1) Section 6064.1 of the California Business and Professions Code requires the Committee to inquire whether or not an applicant advocates the forcible overthrow of the government.

(2) An applicant who obstructs a proper inquiry into his qualifications by refusing to answer material questions can and should be denied admission to the California Bar.

(3) The questions asked Mr. Konigsberg were relevant, material and necessary to a proper determination of his qualifications.

(4) Mr. Konigsberg blocked a proper inquiry into and determination of his qualifications by refusing to answer these questions and therefore should not be admitted to the California Bar.

In requesting certiorari petitioner quotes a comment in the previous majority opinion of this Court indicating a view that a man of petitioner's background and character should be admitted to the Bar (Pet. Br. p. 12) and otherwise argues at length that he possesses traits which he feels would make him a desirable member of the Bar (Pet. Br. pp. 7, 8, 20).

If we were dealing with the question whether petitioner should be admitted to practice law in the Federal Courts, this line of argument would be proper; but this is not the question before us. We are dealing solely with his admission to practice before the courts of the State of California. We fully recognize that this area of state action is not exempt from federal constitutional limitations. Nevertheless it is a vital area of state responsibility into which this Court should be especially reluctant and slow to enter. There are few principles on which this Court should be more unanimous than on refusing its jurisdiction to re-try the qualifications of an applicant for admission to a State Bar.

Theard v. United States (1957), 354 U. S. 278, 281.

Re Summers, (1945), 325 U. S. 561.

C. The Refusal of the Supreme Court of the State of California to Admit to the Practice of Law an Applicant Who Prevents Determination of His Qualifications by Refusing to Disclose the Nature and Extent of His Association With the Communist Party in the Present and Recent Past Does Not Present Any Substantial Federal Question Not Previously Decided by This Court.

The decision of the California Supreme Court determines that an applicant will not be admitted to the Bar of the State of California if he obstructs an inquiry into his fitness by refusing to answer material questions, in this case, the questions relating to membership in the Communist Party from 1951 up to and including September 21, 1957, the date of the Committee hearing:

"Here it is the refusal to answer material questions which is the basis for denial of certification. Petitioner's refusal to answer is conceded. The issue is whether the questions are material. We think their materiality is clear. The committee is enjoined against certifying for admission to practice any person who 'advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means.' (Bus. & Prof. Code, §6064.1). This provision clearly requires the committee to inquire as to such advocacy. The Congress (68 Stat. 775; 50 U. S. C. A. §841) and the California Legislature (Gov. Code, §1027.5) have declared that the Communist Party does advocate such overthrow. It follows that inquiry as to membership in that party is relevant and material in determining whether the proscribed advocacy exists. Petitioner refused to answer questions as to such membership at periods after the statutory proscription and after the legislative declarations of the pur-

pose of the Communist Party. As we have noted, he persisted in his refusal after being warned that such conduct would be deemed to require denial of his certification by the committee."

Konigsberg v. State Bar (1959), Cal. 2d, 52 A. C. 799, 802, 803; 344 P. 2d 777, 779.

At its previous hearing this Court indicated that if Mr. Konigsberg were barred solely because of his refusal to respond to inquiries of the Committee concerning matters such as his political associations without his first being explicitly warned that he would be barred for refusal to answer, serious questions of elemental fairness would be raised. This Court further indicated that a denial of admission on such a ground might present serious questions relating to the constitutional limitations upon interference with freedom of speech. (*Konigsberg v. State Bar*, 353 U. S. 252, 261.)

However, in the light of subsequent events and decisions no such questions are raised here.

(1) Petitioner Was Explicitly Warned of the Consequences of His Refusal to Answer.

Petitioner was clearly and unequivocally warned by the Committee of Bar Examiners that failure to answer the Committee's questions blocked their inquiry and would prevent his certification.

"* * * As a result of our two-fold purpose, particularly our function of investigation, we believe it will be necessary for you, Mr. Konigsberg, to answer our material questions or our investigation will be obstructed. We would not then as a result be able to certify you for admission. * * *

[Sept. Rec. p. 4; see also pp. 32, 39.]

Moreover, he was advised in detail of why these inquiries were considered necessary and why his refusal to answer would prevent his certification.

"If you answered the question, for example, that you had been a member of the Communist Party during some period since 1951 or that you were presently a member of the Communist Party, the Committee would then be in a position to ask you what acts you engaged in to carry out the functions and purposes of that party, what the aims and purposes of the party were, to your knowledge, and questions of that type. You see by failing to answer the initial question there certainly is no basis and no opportunity for us to investigate with respect to the other matters to which the initial question might very well be considered preliminary."

[Sept. Rec. pp. 42-43; see also pp. 46, 47.]

In *Beilan v. Board of Public Education* (1958), 357 U. S. 399, the dismissed schoolteacher contended that he was not sufficiently warned. This argument was rejected:

"Petitioner complains that he was denied due process because he was not sufficiently warned of the consequences of his refusal to answer his Superintendent. The record, however, shows that the Superintendent, in his second interview, specifically warned petitioner that his refusal to answer 'was a very serious and a very important matter and that failure to answer the questions might lead to his dismissal.' That was sufficient warning to petitioner that his refusal to answer might jeopardize his employment."

Beilan v. Board of Public Education, 357 U. S. 399, 408.

Under no stretch of the imagination could the warning in the present case be said to be less explicit than that in the *Beilan* case. There can be no question that petitioner was fully and adequately warned and that lack of warning is not a factor in the present case.

(2) Decisions of This Court Since *Konigsberg v. State Bar*, 353 U. S. 252, Have Obviated the Existence of Any Substantial Question Relating to Interference With Petitioner's Right to the Freedom of His Speech.

In view of the many determinations which have been made as to the nature of the Communist Party and its activities during the period in issue, we do not feel that the questions asked can properly be categorized as referring to petitioner's "political" affiliations.

"On these premises, this Court in its constitutional adjudications has consistently refused to view the Communist Party as an ordinary political party, and has upheld federal legislation aimed at the Communist problem which in a different context would certainly have raised constitutional issues of the gravest character. [Citations] On the same premises this Court has upheld under the Fourteenth Amendment state legislation requiring those occupying or seeking public office to disclaim knowing membership in any organization advocating overthrow of the Government by force and violence, which legislation none can avoid seeing was aimed at membership in the Communist Party. [Citations] *** To suggest that because the Communist Party may also sponsor peaceable political reforms the constitutional issues before us should now be judged as if that Party

were just an ordinary political party from the standpoint of national security, is to ask this Court to blind itself to world affairs which have determined the whole course of our national policy since the close of World War II, affairs to which Judge Learned Hand gave vivid expression in his opinion in *United States v. Dennis* (CA2 NY) 183 F. 2d 201, 213, and to the vast burdens which these conditions have entailed for the entire Nation.

* * * * *

"* * * An investigation of advocacy of or preparation for overthrow certainly embraces the right to identify a witness as a member of the Communist Party . . . and to inquire into the various manifestations of the Party's tenets."

Barenblatt v. United States, 360 U. S. 109, 128-129.

Both the Congress and the California Legislature have designated the Communist Party as an instrumentality of a conspiracy to forcibly overthrow the United States Government.

68 Stat. 775, 50 U. S. C. §841 (Supp. 1954).

Calif. Govt. Code §1027.5 (1953).

But, however these questions are categorized, it is clear from the record that they were not asked as idle inquiries into petitioner's political affiliations. The Committee of Bar Examiners determined and the California Supreme Court affirmed them to be both relevant and material to a proper and necessary area of inquiry in determining

petitioner's fitness to practice law.¹ Any question which might have previously existed as to the propriety of denying an applicant admission who fails to answer these questions has been removed by the recent decisions of this Court.

In *Beilan v. Board of Public Education* (1958) *supra*, 357 U. S. 399, this Court upheld the discharge of a public schoolteacher for failing to answer questions by his Supervisor relating to his association with the Communist Party with the following comment directly applicable to the present situation:

"* * * In the *Konigsberg Case*, *supra*, (353 U. S. at 259-261), this Court stresses the fact that the action of the State was not based on the mere refusal to answer relevant questions—rather, it was based on inferences impermissibly drawn from the refusal. In the instant case, no inferences at all were drawn from petitioner's refusal to answer."

Beilan v. Board of Public Education, 357 U. S. 399, 409.

In *Lerner v. Casey* (1958), 357 U. S. 468, this Court similarly upheld the discharge of a subway conductor in the New York City Transit System for refusing to answer to those charged with administering the New York

¹These questions, would be proper, were there no other evidence in the record raising doubts in this area. These questions were particularly pertinent here where other evidence properly raised doubts in the minds of the Committee and drew attention to the necessity of an investigation in this area. (See pp. 42 *et seq.*, 154-155, 162-163, 213 *et seq.*, and 246 of the record before this Court in *Konigsberg v. The State Bar of California*, October Term, 1956, No. 5.)

Security Risk Law whether he was then a member of the Communist Party.

On page 16 of his brief, the petitioner attempts to distinguish the *Beilan* and *Lerner* cases on the ground that they involved dismissals resulting from assertion of the privilege against self-incrimination under the Fifth Amendment. With regard to the *Beilan* case, this assertion is incorrect. Mr. Beilan did assert the Fifth Amendment in response to questions by a congressional investigating committee. But, he was discharged because he refused to answer questions posed by his Superintendent on the ground that they related to his "political" beliefs. This, of course, is substantially the identical position taken by the petitioner before the Committee of Bar Examiners. Furthermore, the position is untenable that one who asserts a privilege under the Fifth Amendment is in a different position from one who asserts a privilege under any other portion of the Constitution. (See, *Slochower v. Board of Higher Education*, 350 U. S. 551, 557-558). It may also be mentioned that the decision of this Court in *Lerner v. Casey* was in no way predicated upon adverse inferences drawn from assertion of the Fifth Amendment privilege.

If anything, the action taken in the *Beilan* and *Lerner* cases goes beyond that taken here. In each of those cases, the petitioner was being removed from an employment which he had held for many years rather than being denied entry to a new employment. More importantly, there can be no question that the concern of the State of California in setting standards for admission to its Bar is fully as great as that of the City of Philadelphia in selecting its schoolteachers and that of New York in selecting its subway conductors. An attorney becomes an

officer of the court, but, even apart from this, he occupies a position of trust and confidence unique among the professions. The recent comment of Mr. Justice Stewart in another context in a suspension and disbarment case is apropos to the present situation:

“A lawyer belongs to a profession with inherited standards of propriety and honor, which experience has shown necessary in a calling dedicated to the accomplishment of justice. He who would follow that calling must conform to those standards.”

Re Sawyer, 360 U. S. 622, 646-647.

While the above cases are most closely in point, it may be added that this Court has applied even more serious sanctions for refusal to answer questions of the type asked. In *Barenblatt v. United States* (1959) *supra*, 360 U. S. 109, and *Uphaus v. Wyman* (1959), 360 U. S. 72, this Court sustained criminal sanctions against witnesses who refused to answer similar questions asked by an investigating committee of the United States Congress and the Attorney General of New Hampshire on behalf of the legislature of that state. The purpose of these inquiries was no more vital than that of the State of California in the present case.

One final comment is appropriate. Petitioner's brief contains suggestions that the State Bar has singled him out to block his admission by any means. (See, for example, petitioner's brief, page 12, footnote 3, pages 4, 5.) We accept these assertions as those of an advocate. We feel, however, that a study of the complete record leaves no doubt that the Committee of Bar Examiners has treated Mr. Konigsberg with complete fairness at all times. Moreover, it is appropriate to call attention to

the action of the Committee of Bar Examiners and the California Supreme Court in the case of *Buhai v. Committee of Bar Examiners*, L. A. 24339, Bar Misc. Dkt. No. 2412. Miss Buhai admitted active membership in the Communist Party through 1947, and dues-paying membership through 1953, but, like Mr. Konigsberg, refused to reveal certain details regarding her specific activities and associations in the party. Accordingly, she was denied certification by the Committee and she petitioned the California Supreme Court for admission. While her petition was pending, she voluntarily appeared before the Committee and responded to inquiries concerning the circumstances of her termination of her membership in and disassociation from the Communist Party and the names of certain persons to whom she had communicated such termination and disassociation. On the basis of her further testimony and its own investigation, the Committee determined that Miss Buhai was entitled to certification notwithstanding her previous association with the Communist Party. She was admitted to the practice of law by the California Supreme Court on December 4, 1957. The Report of the Committee of Bar Examiners to the California Supreme Court in the *Buhai* case is set forth in the Appendix as Exhibit B.

In *Re George Anastaplo* (1955), 348 U. S. 946, reh. den. 349 U. S. 908, an applicant for admission to the Illinois Bar presented essentially the same issues now involved in this case to this Court and requested a writ of certiorari. It was denied for lack of a substantial federal question. Since that time, cases such as *Beilan v. Board of Public Education* (1958), 357 U. S. 399, *Lerner v. Casey* (1958), 357 U. S. 468, and *Barenblatt v. United States* (1959), 360 U. S. 109, have been decided

resolving the one substantial federal question which could conceivably be presented in the present case. We therefore submit that there is even less basis than in the *Anastaplo* case to issue a writ of certiorari here.

Respectfully submitted,

FRANK B. BELCHER,

Attorney for Respondents.

RALPH E. LEWIS,

ROBERT D. BURCH,

Of Counsel.

EXHIBIT "A".

L. A. No. 23266.

In the Supreme Court of the State of California.

Raphael Konigsberg, Petitioner, vs. State Bar of California and the Committee of Bar Examiners of the State Bar of California, Respondents.

Report of the Committee of Bar Examiners.

To the Honorable Phil S. Gibson, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the State of California:

I.

On July 10, 1957, the following order was made in the above entitled matter:

"Pursuant to mandate of the Supreme Court of the United States, it is ordered that the decision of this Court, filed April 20, 1955, be vacated, and the matter of admitting Raphael Konigsberg to the practice of law in all the courts of this State is referred to the Committee of Bar Examiners for further proceedings.

"CARTER, J. is of the opinion that the application of Raphael Konigsberg for admission to practice law in all of the courts of this State should now be granted.

(S) GIBSON, Chief Justice."

II.

Pursuant to this order, the following action was taken by the Committee of Bar Examiners in the matter of the application of Raphael Konigsberg for admission to practice law in the State of California:

(1) The Committee carefully considered the opinion of the Supreme Court of the United States in the matter

entitled "Raphael Konigsberg, Petitioner, vs. State Bar of California and Committee of Bar Examiners of the State Bar of California", decided May 6, 1957, 353 U. S., 1 L. Ed. 2d 810, 77 S. Ct.

(2) On September 21, 1957, at a meeting of the Committee in Los Angeles, at which all of the members of the Committee were present, the applicant appeared with his attorney, Edward Mosk, Esq. At this meeting the applicant's petition for admission was further heard by the Committee. An argument by the attorney for the applicant in support of the application for admission was also heard. The applicant was sworn and testified at the hearing. A witness produced by the applicant was sworn and testified. Written evidence was offered by the applicant, and was received by the Committee. The written record of all previous hearings by the Committee and one of its subcommittees on the application of Raphael Konigsberg for admission was incorporated as part of the record of the further hearing, by the stipulation of the applicant and by the Committee.

(3) The application was then submitted by the applicant and by his attorney.

III.

At the hearing on September 21, 1957, the Committee advised the applicant and his attorney that the refusal of applicant to answer material questions put to him by the Committee would obstruct the investigation by the Committee of applicant's qualifications for admission to practice law, with the result that the Committee would not be able to certify him for admission.

IV.

At the hearing on September 21, 1957, applicant refused to answer any questions put to him by the Committee concerning his past or present membership in or affiliation with the Communist Party.

V.

After further consideration of the entire record before it, the Committee finds and concludes:

(1) That the questions put to the applicant by the Committee concerning past or present membership in or affiliation with the Communist Party are material to a proper and complete investigation of his qualifications for admission to practice law in the State of California.

(2) That the refusal of applicant to answer said questions has obstructed a proper and complete investigation of applicant's qualifications for admission to practice law in the State of California.

(3) That the refusal of applicant to answer said questions has obstructed a necessary and proper function of the Committee under Section 6046 and related sections of the Business & Professions Code of the State of California and under the Rules Regulating Admission to Practice Law in California adopted pursuant to Section 6047 and related sections of said Code.

(4) That in view of the foregoing, the Committee is unable to certify that applicant possesses the requisite qualifications or has fulfilled the requirements for admission to practice law in the State of California.

In Witness Whereof, the Committee of Bar Examiners of the State Bar of California respectfully submits this report of its proceedings on the reference made to it.

by the Supreme Court of the State of California on July 10, 1957, together with the transcript of the hearing before the Committee on September 21, 1957, and the exhibits submitted by the applicant at that hearing.

Dated: November 9, 1957.

SHARP WHITMORE,
VINCENT H. O'DONNELL,
GEORGE HARNAGEL, JR.
FORREST E. MACOMBER,
GERALD P. MARTIN,
THOMAS H. Mc GOVERN,
JOHN B. SURR,

*The Committee of Bar Examiners
of the State Bar of California,*

By SHARP WHITMORE,
Chairman.

EXHIBIT "B".

L. A. No. 24339.

In the Supreme Court of the State of California.

Harriett Buhai, Petitioner vs. State Bar of California
and the Committee of Bar Examiners of the State Bar
of California, Respondents.

Report of the Committee of Bar Examiners.

To the Honorable Phil S. Gibson, Chief Justice, and to
the Honorable Associate Justices of the Supreme Court
of the State of California:

I.

On August 13, 1957, the following order was made in
the above entitled matter:

"The above-entitled matter is referred to the Committee
of Bar Examiners for further proceedings.

(S) GIBSON, Chief Justice."

II.

Pursuant to this order, the following action was taken
by the Committee of Bar Examiners in the matter of the
application of Harriett Buhai for admission to practice
law in the State of California:

(1) On September 21, 1957, at a meeting of the Com-
mittee in Los Angeles, at which all of the members of
the Committee were present, the applicant appeared with
her counsel, Stanley Fleishman, Esq., Clore Warner, Esq.,
and Harvey Grossman, Esq. At this meeting the ap-
plicant's petition for admission was again heard by the
Committee. An argument by counsel for the applicant in
support of the application for admission was also heard.
The applicant was sworn and testified at the hearing.
Two witnesses produced by the applicant were sworn and
testified. The written record of all previous hearings by
the Committee and one of its subcommittees on the appli-

cation of Harriett Buhai for admission was incorporated as part of the record of the further hearing, by the stipulation of the applicant and by the Committee.

(2) The application was then submitted by the applicant and by her counsel.

III.

At the hearing on September 21, 1957, the Committee advised the applicant that her refusal to answer material questions put to her by the Committee would obstruct the investigation by the Committee of applicant's qualifications for admission to practice law, and the Committee would not be able to certify her for admission.

IV.

At the hearing on September 21, 1957, applicant answered questions concerning the circumstances of her termination of membership in and disassociation from the Communist Party and the names of certain persons to whom she had communicated such termination and disassociation, the applicant at previous hearings having refused to divulge any of such names.

V.

On the basis of the additional testimony at the hearing on September 21, 1957, a further investigation was conducted by the Committee of Bar Examiners. This further investigation disclosed no facts inconsistent with the testimony of the applicant.

VI.

On the basis of the additional testimony given by the applicant at the hearing on September 21, 1957, and on the basis of the further investigation thereafter conducted by the Committee, the Committee at a meeting held on October 6, 1957, found that applicant possessed the requisite qualifications and had fulfilled the requirements for admission to practice law in the State of California.

and voted to certify applicant to the Supreme Court of the State of California for such admission.

VII.

On October 18, 1957, George Harnagel, Jr., Esq., a member of the Committee of Bar Examiners and acting for the Committee, certified to the Supreme Court that Harriett Buhai had fulfilled the requirements for admission to practice law in the State of California, and moved that she be admitted as an attorney at law in all the courts of the State of California.

VIII.

The Supreme Court deferred action on the motion to admit Harriett Buhai to the practice of law in this State, and directed that a report be filed by the Committee of Bar Examiners with the Court.

In Witness Whereof, the Committee of Bar Examiners of the State Bar of California respectfully submits this report of its proceedings on the reference made to it by the Supreme Court of the State of California on August 13, 1957, together with the transcript of the hearing before the Committee on September 21, 1957.

Dated: November 9, 1957.

SHARP WHITMORE,
VINCENT H. O'DONNELL,
GEORGE HARNAGEL, JR.
FORREST E. MACOMBER,
GERALD P. MARTIN,
THOMAS H. Mc GOVERN,
JOHN B. SURR,

*The Committee of Bar Examiners
of the State Bar of California,*

By SHARP WHITMORE,
Chairman.

PETITIONER'S OPENING BRIEF

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IN THE
Supreme Court of the United States

October Term, 1960

No. 28

RAPHAEL K. KONIGSBERG,

Petitioner,

vs.

STATE BAR OF CALIFORNIA AND THE COMMITTEE OF
BAR EXAMINERS OF THE STATE OF CALIFORNIA.

PETITIONER'S OPENING BRIEF.

I.

Prior Opinions.

The controlling court opinion in this proceeding is the opinion and judgment of this court in *Konigsberg v. State Bar*, 353 U. S. 252 (1957).

The only written opinion below is the decision of the Supreme Court of the State of California in L.A. 23266, on October 16, 1959. The majority opinion by the Court in bank is found as Exhibit "C" attached to the Petition for a Writ of Certiorari filed by the petitioner herein and is also found on page 52 of the transcript of record. The decision is reported in the official reports as 52 Cal. 2d 769. The dissenting opinion of Mr. Justice Traynor, as Acting Presiding Judge is found on page 12 of the Appendix to the Petition for Writ of

Certiorari and on page 58 of the 1960 Transcript of Record. A second dissenting opinion filed by Mr. Justice Peters is found on page 17 of the Appendix to the Petition for Writ of Certiorari and on page 62 of the 1960 Transcript of Record. Chief Justice Gibson disqualified himself from these proceedings and did not participate in the decision of the Supreme Court of California.¹

A petition for rehearing was filed with the Supreme Court of the State of California and on November 13, 1959, the petition was denied with Acting Chief Justice Traynor and Justice Peters stating that they were "of the opinion that the petition should be granted."

II. Jurisdiction.

A petition for a writ of certiorari was filed before this court on January 26, 1960, and certiorari was granted on March 7, 1960.

III. Constitutional Provisions and Statutes Involved.

1. Constitution of the United States:

a. The First Amendment to the Constitution of the United States provides:

"Congress shall make no law . . . abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

¹Chief Justice Gibson however voted along with Justice Jesse Carter and Justice Traynor for a hearing of this matter when the California Supreme Court denied review on April 20, 1955. See 1956 Record, page 132.

b. The Fourteenth Amendment to the United States Constitution provides:

"no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(Sec. 1.)

2. The only California Statutes involved are from the Business and Professions Code of the State of California:

a. Section 6000. Qualifications for Applicants.

"To be certified to the Supreme Court for admission and a license to practice law, a person (must)

(c) Be of good moral character.

b. Section 6064.1. One Advocating the Overthrow of Government Not To Be Admitted:

"No person who advocates the overthrow of the government of the United States or this State by force, violence or other unconstitutional means shall be certified to the Supreme Court for admission and a license to practice law."

3. Rules regulating admission to practice law in California adopted pursuant to the provisions of the State Bar Act (Ch. IV, Div. 3 of the Business and Professions Code) as approved by the Board of Governors

of the State Bar of California, September 8, 1937, as applying to the present case are:

a. "Section 6: In the conduct of investigations and upon the hearing of all matters, the committee, or any subcommittee, having jurisdiction may:

(1) Take herein relevant evidence;

(2) Administer oaths and affirmations;

(3) Compel, by subpoena, the attendance of witnesses and production of relevant books, papers and documents."

b. Rule 10: Moral Character.

"Section 101. Every applicant shall be of good moral character. Investigations in reference to the moral character of applicants may be informal, but shall be thorough, with the object of ascertaining the truth. Neither the hearsay rule, nor any other technical rule of evidence, need be observed; but an applicant shall be advised of any and all information received by the committee adversely bearing on his moral character upon which a denial of recommendation by the committee is based, and he shall be given a reasonable opportunity to rebut or explain the same. The applicant shall have the opportunity of proving that he is possessed of good moral character, of removing any and all reasonable suspicion of moral unfitness, and that he is entitled to the high regard and confidence of the public."

IV.

Questions Presented.

The questions as presented in the Petition for a Writ of Certiorari are the following:

1. Whether the judgment of the court below, upholding the action of the State Bar Committee of Bar Examiners, refusing to certify petitioner to the court for admission to practice law in California and denying petitioner's application for admission to the bar of California, is inconsistent with this court's opinion, findings, judgment and mandate in *Kontigsberg v. State of California*, 353 U. S. 252 (1957), with the resultant deprivation of petitioner's liberty and property without due process of law and the denial to him of the equal protection of the laws in violation of the due process and equal-protection provisions of the Fourteenth Amendment to the United States Constitution.

2. Where this court has held that the petitioner successfully met all state requirements, and that a denial of petitioner's application for admission to the bar would be a deprivation of petitioner's liberty and property without due process of law, is it not an arbitrary and capricious act and an abridgement of petitioner's right to pursue his chosen profession and right to the exercise of freedom of speech, press and assembly contrary to the due process provisions of the Fourteenth Amendment to coerce petitioner in subsequent state proceedings on remand to reveal his political affiliations as a newly contrived condition to admission to the bar where in the said subsequent proceedings the State Bar Committee of Bar Examiners comes forward with no affirmative or further proof of petitioner's disqualification to

warrant or justify the aforesaid limitation upon petitioner's rights under the Constitution?

3. Where the record before this court in *Konigsberg v. State of California*, 353 U. S. 252 (1957), conclusively established that petitioner was of good moral character and did not advocate the forceful overthrow of Government and that petitioner had fulfilled all requirements affecting the right to pursue his chosen profession, and when on remand the record in subsequent proceedings and brought up to date shows the same good moral character and loyalty, is it not arbitrary and capricious and a deprivation of petitioner's liberty without due process of law and denial to him of the equal protection of the laws in violation of the applicable provisions of the Fourteenth Amendment to refuse to certify petitioner for admission to practice law and deny his application for admission to the bar solely because of petitioner's refusal to reveal his political affiliations?

4. Where the entire record demonstrates that petitioner has declined to reveal his political affiliations solely upon grounds of long held principle and private conscience, is it not a deprivation of petitioner's freedom of speech, press, assembly and conscience, contrary to the due process inhibitions of the Fourteenth Amendment, to deny petitioner admission to the bar solely because of petitioner's conscientious refusal to reveal his political affiliations?

5. Where the entire record reveals that petitioner has met the ordinary requirements for admission to the Bar

and has overwhelmingly established his loyalty and good moral character, is it not arbitrary, unreasonable and capricious and a deprivation of petitioner's liberty and property without due process of law to deny petitioner admission to the bar solely because of his refusal to reveal his political affiliations in the light of the state and national interest in a free and independent bar and the free exercise of speech, press, assembly and private conscience?

6. Where the petitioner has met all statutory requirements for admission to the Bar and has complied with all written and formally promulgated rules of the Committee of Bar Examiners as prerequisites to admission to the Bar and has met every standard established by judicial decision in the State of California relating to admission to the Bar, it is not a denial of petitioner's liberty and property without due process of law and a denial of equal protection of the laws for the petitioner to be denied admission to the Bar on the basis of a "rule" requiring that he answer questions relating to his political affiliations where that "rule" requiring that he answer questions relating to his political affiliations where that "rule" is first announced and tailored to his specific situation at a hearing held seven years after he commenced the study of law and subsequent to the mandate, decision and opinion of the Supreme Court of the United States on the facts of his case?

V.

Factual Background.

Exactly ten years ago in the year 1950 Raphael Konigsberg commenced the study of law after many years of employment as a social worker including a period as Director of Social Services of the City of Hope Sanitarium, in Duarte, California [1956 Rec. pp. 5-6]² and as a District Director of the State Administration of the State of California, [1956 Rec. p. 6]. Konigsberg also had served with great distinction in the Armed Forces of the United States from October 1942 to October 1946 and achieved the rank of Captain serving as Orientation Officer for the United States 7th Army in Germany, supervising that program for over four hundred thousand troops. [1956 Rec. pp. 6 and 15.]

In 1953, at the age of 42 Konigsberg completed all of the legal requirements established under the laws of the State of California as qualifications for becoming a member of the Bar of the State of California.³

In the year of 1953 and in early 1954 a series of hearings was held before the Committee of Bar Examiners ostensibly directed towards determining whether petitioner was of good moral character and whether he

²Since the record in this case is composed of two separate transcripts, the transcript of the record of the hearing which was before this Court in 1956 will be referred to herein as [1956 R. p.] and the transcript of the record before the Committee of Bar Examiners commencing in 1957 and before this Court as the transcript of the record for the October Term 1960 will be referred to hereinafter as [1960 R. p.].

³Business and Professions Code, Section 6060.

advocated the overthrow of the government by force and violence or other unconstitutional means.

At the conclusion of these hearings the Committee of Bar Examiners determined that petitioner Konigsberg had not sustained the burden of proof (1) that he was possessed of the good moral character required by Sec. 6060(c) of the State Bar Act or (2) that you have complied with the provisions of Sec. 6064.1 of said act. [1956 Rec. p. 344.]

The Supreme Court of California after petition by Konigsberg refused to review the decision by the Committee although three members of the court (Chief Justice Gibson and Justices Traynor and Carter) voted for a hearing. Konigsberg then petitioned to this court for a Writ of Certiorari. Certiorari was granted and this Court rendered its decision on May 6, 1957 reversing and remanding the matter for further proceedings not inconsistent with the opinion.

On remand to the Supreme Court of California petitioner filed on June 26, 1957 an application for admission to the practice of law based upon the opinion of this Court in *Konigsberg v. State Bar*, 353 U. S. 252 [1960 Rec. p. 1.]

The Supreme Court of California thereafter vacated its prior order and referred the matter to the Committee of Bar Examiners for further proceedings. Justice Carter recorded that he was of the opinion that "the application of Raphael Konigsberg for admission to practice law in all of the courts of this State should now be granted". [1960 Rec. pp. 2-3.]

On September 21, 1957 the Committee of Bar Examiners then conducted a further hearing.

At this hearing counsel for petitioner requested the Committee of Bar Examiners to immediately recommend favorably to the Supreme Court of California the application for admission of Konigsberg and urged that it would be a denial of due process to proceed with any further proceedings other than to recommend admission. The Committee denied the motion. [1960 Rec. p. 10.]

Petitioner then called on his behalf as a further witness to establish the continuing nature of his good moral character Herbert D. Tobin. [1960 Rec. pp. 11-14.] Tobin testified that Konigsberg had been employed as office manager in connection with his tract building operations for a period of two and one half years. He testified that "I think he is probably the most honest both intellectually as well as legally the most honest man I have ever met. . . . His ethics and his attitudes, his sincerity, his loyalty, is beyond all reproach . . . he has full power to sign checks on our general account, which at times may have as much as a quarter of a million dollars in it . . ." [1960 Rec. p. 13.]

In response to the question "Have you observed in the course of the two and a half years any indication on the part of Mr. Konigsberg of a belief of the overthrow of the government by force and violence?" Mr. Tobin responded, "No, that is completely childish." [1960 Rec. p. 14.]

The Committee of Bar Examiners was afforded an opportunity to cross-examine Mr. Tobin but declined to ask any questions. [1960 Rec. p. 14.]

Thereafter the Committee proceeded to question Konigsberg personally and the questions did not raise nor

did the committee inquire about any single derogatory fact in the life or activities of Konigsberg since the prior proceedings or any other time during his life.

The Committee then asked whether Konigsberg had ever been a member of or affiliated with any organization the purpose of which at the time of your membership or affiliation is, or was, to advocate the overthrow of the constitutional form of government . . . [1960 Rec. p. 19] and whether he "had been a member of the Communist Party at any time since 1951". [1960 Rec. p. 23.]

Konigsberg responded in part that

"The question, of course, is similar to the question asked me four years ago, though phrased somewhat differently, and while I think we all change somewhat in four years even at this age in our thinking, the basic principles that I established in that case and in those hearings that questions regarding one's political thinking are protected by the First Amendment and have no bearing whatsoever on one's moral character, have, I think, pretty well been determined by the Supreme Court Opinion in my case and certainly having the Supreme Court vindicate my opinion and principles which are now in effect, and in a sense the law of the land because of the Supreme Court Opinion. I could hardly be expected at this point for expediency to give up principles that have been upheld by the highest court of our country. . . . [1960 Rec. pp. 19-20.]

"Now if you were asking me whether I, as a person ever belonged to an organization that ad-

vocated the overthrow of the government by force or violence, according to my knowledge, or whether I personally ever advocated this or ever did anything such as throwing a bomb or writing a leaflet or speaking of advocating the overthrow of the government by force and violence or even whether I ever attended a meeting at which force and violence was proposed as a course of action, the answer is no. I personally have never been a member of an organization which to my knowledge engaged in such advocacy. I never could be or would be. I never did a thing in that direction I made clear in the prior hearings but if you are asking me whether I as a citizen have in the course of normal civic or political duty describe it as you will, because I think the record does make clear that I have a strong civic conscience, if what you mean by your questions did I ever join with people who were known to be members of the Communist Party, if that were the case or if whether I personally joined the Communist Party as a legal political organization in this State, which the Supreme Court, in my opinion, makes clear it was at the time, then I refuse to answer that phase of the question, because this is an area protected by the First Amendment from ages past, and certainly reaffirmed in recent decisions, including my own." [1960 Rec. pp. 20-21.]

Petitioner further stated:

"... I think the record makes very clear whatever you may think of those principles that I have tried to live a principled life, and that being

the case you can hardly ask me as a matter of conscience or a matter of principle to give up various principles. This would be committing on my part an immoral act. I doubt very much if the Committee intends to take the position that to prove his good moral character an applicant must commit what to him is an immoral act. [1960 Rec. p. 21.]

"I think I will only reaffirm to my knowledge. I have never been a member of such an organization or group, a part of an organization, or however you want to phrase it. I think this would clarify the matter. May I say that I think you are rightly concerned with matters of advocacy of the overthrow of the government, but it seems to me that you had the opportunity in the previous hearings, and you have it now if you have evidence of any illegal acts on my part then they should be brought forward and give me a chance to answer them, and I will be happy to answer them, not proceed on the basis of mere suspicions. If you have acts or evidence of any acts, I ask you now to bring them forward so I can answer them." [1960 Rec. p. 22.]

The Committee Chairman then informed Konigsberg that the Committee had two functions—to "investigate" and to "determine" and stated that they were engaged in the function of investigating matters "which we are charged with the responsibility of determining under the law of the State of California." He stated in part that

"If we, Mr. Konigsberg, at this point had someone who would testify that such and such was not

the case with respect to an answer that you have given, we would feel it incumbent upon us, at this time or at another hearing to bring that person before you and have testimony introduced into the record in order that you would have the right to cross-examination through your counsel." [1960 Rec. p. 23.]

The Committee then proceeded to inquire regarding specific activities of petitioner and all these questions were answered directly and unequivocally by Konigsberg. [1960 Rec. pp. 24-26.]

At a later point in the hearing [1960 Rec. p. 32] Mr. McGovern speaking for the Committee suggested that petitioner had taken the position that the Committee could only inquire as to whether he believed in forcible overthrow of the government. Konigsberg responded in part to this

"... Do you have any evidence of illegal acts? Bring them out, but you haven't done that.

It isn't enough for an American to accept the various privileges that that citizenship grants to them there are certain deep responsibilities that go with those privileges, and unfortunately most of us don't know them, don't accept them, and are not taught them. I was, and I have tried to follow it . . . among the duties of a citizen to compensate for the great advantages he gets, it seems to me is to, of course, protect your country when in danger, whether war or other, to try to live as you might say a seven day practicing believer in democracy, not just on some days, and finally to defend the Constitution by refusing to join in any acts which

in any sense weaken it or compromise it. I feel if you persist in asking questions which go into the areas which are protected by the Constitution, that is what you are doing you are compromising constitutional principles. I cannot be a party to it no matter what the price." [1960 Rec. p. 32.]

And finally after a Committee member pointed out that an answer to the question might lead the committee into further areas of investigation Konigsberg responded:

"I have tried to answer I never advocated the overthrow of the government or belonged to an organization that advocated the overthrow of the government. I never attended meetings where this was done. I cannot agree that that is all you are doing when you are asking these questions. What you are asking has already been answered. Any further evidence or information that you seek is invading my rights as to opinion or association, and as leaders in a Bar it seems to me you should be among those strengthening these rights along with the trend of decisions to firm up constitutional conduct and get away from non-conformity that plighted the country in recent years." [1960 Rec. pp. 33-34.]

The only other evidence at the hearing was a series of letters presented on behalf of Konigsberg further attesting to his good moral character. [1960 Rec. pp. 39-50.] These communications updated the series of communications introduced at the earlier hearings and were written primarily by persons who had known Konigsberg since the prior decision of the Court. Typical of these communications are such comments as "In our

opinion Mr. Konigsberg is without question an individual of the highest moral character and unimpeachable integrity"⁴ . . . and "I have the highest regard for his intelligence, integrity, and moral character and believe he will make an exemplary member of the bar."⁵ . . . and, "for these reasons I can think of no other person whom I would rather meet as an opponent in a legal matter, or as an associate, and I feel that he will be an exceptional addition to the legal profession in California."⁶

As a final matter at the hearing, Counsel for the petitioner informed the Committee that he was aware that the Committee had made an independent investigation into the character of petitioner and⁷ that a Committee Investigator had sought to determine from many sources whether anything derogatory had occurred in the life of Konigsberg. The Chairman of the Committee acknowledged that such an investigation had been made. He stated that, "You may be certain, however, prior to the time any information that is adverse to Mr. Konigsberg is considered by the committee, Mr. Konigsberg and you, as his counsel, will be made aware of that adverse information." [1960 Rec. p. 39.]

The record is devoid of any single fact regarding the character of Konigsberg derogatory in nature nor has

⁴Rubins, Rossman and Borak, Certified Public Accountants, [1960 R. p. 49].

⁵Harold Koppelnar, M.D. [1960 R. p. 48].

⁶Richard H. Oshman, Attorney at Law, [1960 R. pp. 45-56].

Konigsberg been "made aware" of any such "adverse information."

VI.

Summary of Argument.

"The State of California has established statutory requirements for admission to the Bar. Petitioner was held by this court to have complied with all of these requirements and this court stated that "it is difficult to comprehend why the State Bar Committee rejected a man of Konigsberg's background and character as morally unfit to practice law." Petitioner's moral character remains unchallenged after new hearings by the Committee of Bar Examiners and there is no further evidence indicating belief by petitioner in the overthrow of the government by force or violence or other unconstitutional means.

In view of petitioner's compliance with all statutory requirements, it is a denial of due process of law for the respondent to continue to deny petitioner admission to the Bar.

Petitioner continues to take the same principled position taken before the first decision of this court in this matter. To require petitioner to answer the questions asked under all of the background circumstances of this case would be to force him to commit an immoral act and thus disqualify himself from admission to the Bar.

Matters occurring at the first hearings and prior to the opinion of the Court in that case are not repeated here because all of said issues were heretofore disposed of by this court. A summary of these facts however is to be found on pages 8-18 of the Petitioner's Opening Brief in the proceedings before this Court in the October Term of 1956 and in the Transcript of the Proceedings in that matter which is before this Court by reason of the Court Order dated March 7, 1960 [1960 R. p. 72].

There is no law of the State of California, no prior decision of the Supreme Court of California, nor did the Committee of Bar Examiners ever pass a Rule permitting the Committee to deny petitioner admission to the Bar solely because he failed to answer specific questions regarding his political affiliations or associations. The "rule" in this case was one brought into being solely at the hearing for petitioner. "Elemental Fairness" required by due process of law would prohibit the enforcement of such a "rule" against this petitioner after the Supreme Court has already passed on the facts of this case.

Where the Respondent has applied one rule as the basis for denying petitioner admission to the bar and the court has found that this basis was not proper under the constitution, the respondent cannot thereafter commence the same litigation again based upon an entirely new theory without denying petitioner his constitutional rights.

The questions asked of petitioner by the Committee were all questions falling within the protection of the First Amendment of the Constitution. The balance of rights between the individual and the state must be weighed heavier on the side of the individual where there the questions are designed to curtail the independence of the bar.

It is not proper to equate the responsibilities of an employee to his employer with the obligation of an applicant for entrance into the independent profession of the bar. To restrict membership in the Bar by reason of the refusal of an applicant to discuss his political affiliations and associations would be a serious encroachment of the freedom and independence of the bar which is so vital to the preservation of our democracy.

VII.
Argument.

A. Petitioner Has Complied With All Statutory
Requirements for Admission to Bar.

1. *The Prior Record Shows Petitioner's Compliance
With California Statutory Requirements.*

The Statutes of the State of California relating to the requirements for admission to the practice of law are found exclusively in the Business and Professions Code of the State.⁸ Except as these statutes have been interpreted by the Supreme Court of the State of California⁹ and by such rules as have been formally promulgated by the Committee of Bar Examiners.¹⁰ These are the sole legal requirements and the only basis for determining who is to be admitted to the practice of law in the State of California.

These requirements insofar as they apply to the facts of this case are only two:

1. That an applicant who has qualified from the point of view of education¹¹ and age must be a person of good moral character and

2. Under the provisions of Sec. 6064.1 must not be a person who advocates the overthrow of the government by force, violence or other unconstitutional means.

⁸See Business and Professions Code, 6060 and 6064.1.

⁹There are no prior written decisions of the Supreme Court denying an applicant admission to the Bar by reason of applicants political associations or beliefs.

¹⁰The petitioner has set forth on pages 2-5 the basic rules which apply to this case.

¹¹About which there is no dispute in this proceeding.

When this proceeding was before the Supreme Court in the 1956 Term the Committee of Bar Examiners stated that the petitioner ~~Konigsberg~~ had failed to meet his burden of proof that he was of good moral character and did not believe in the overthrow of the government by force and violence.¹²

At that time petitioner argued that he had met his burden of proof in both instances although he argued that under the law the burden of proof on the issue of force and violence did not fall upon him but must be affirmatively proved by the Committee of Bar Examiners. (*Speiser v. Randall*, 357 U. S. 513 (1958).)

This Court found that:

"After examination of the record, we are compelled to agree with ~~Konigsberg~~ that the evidence does not rationally support the only two grounds upon which the Committee relied in rejecting his application for admission to the California Bar."

and

"On the record before us it is our judgment that the inferences of bad moral character which the Committee attempted to draw from ~~Konigsberg's~~ refusal to answer questions about his political affiliations and opinions are unwarranted."

and

"In this case we are compelled to conclude that there is no evidence in the record which rationally justifies the finding that ~~Konigsberg~~ failed to establish his good moral character . . . without some authentic, reliable evidence of unlawful or

¹²See 1956 Record, page 131.

immoral actions reflecting adversely upon him, it is difficult to comprehend why the State Bar Committee rejected a man of Konigberg's background and character as morally unfit to practice law." (353 U. S. 252, 262, 270-271, 273.)

These findings clearly indicated that Konigsberg had met his burden of proof and had established his good moral character, and that it was a denial of due process to thereafter deny him admission to the practice of law.

Wherein is the posture of the present record any different than the record before the Court in the October 1956 Term of the Court?

2. Petitioner's Good Moral Character Remains Unchallenged.

Since the 1957 decision the Committee of Bar Examiners has by its own admission employed an investigator to find any available evidence adverse to petitioner.¹³ The Chairman of the Committee conceded that no such evidence was considered in making its determination and that if it obtained any such evidence it would give the petitioner an opportunity to rebut. The record clearly indicates that no such evidence exists.

Under these circumstances the moral character of the petitioner remains in the same status as at the time of the previous decision and opinion of this Court when it was stated that petitioner had met his burden of proof.

¹³1960 Record, pages 38-39.

In addition, however, petitioner has on his own initiative brought that record of good moral character up to date and has shown by letters from lawyers, doctors, certified public accountants and other persons of public stature that he continues to be a person of good moral character.¹⁴ One witness was brought before the Committee to testify personally that he had known petitioner intimately for two and a half years as his employer and had placed in petitioner great trust and responsibility and that he considered petitioner to be a person of the highest moral character and integrity.¹⁵

The Committee of Bar Examiners had full opportunity to question each and every person who wrote letters on behalf of the petitioner¹⁶ but even if this appeared to be too much effort for the Committee, the members had the opportunity to question the one witness who was brought before the Committee by the petitioner. Yet not one question was asked in cross-examination nor was any effort made to challenge in

¹⁴See 1960 Record, pages 39-50.

¹⁵1960 Record, pages 11-14.

¹⁶It should be remembered that at the first hearing petitioner introduced letters from 35 persons. Respondent minimized the importance of these letters in its briefs but it is clear that with all of these leads available to it, the Committee and its investigator failed to find any information derogatory to the petitioner. This fact alone makes the argument of "Frustration of its investigation" appear shallow and contrived.

any manner petitioner's showing of his good moral character.¹⁷

On the state of this record, then, petitioner's good moral character is conclusively established and he has complied with this requirement for admission to the Bar of the State of California.

3. *The Record Continues to Show That Petitioner Does Not Advocate Overthrow of the Government by Force and Violence.*

The second requirement is that petitioner not be a person who believes in the overthrow of the government by force or violence or other unconstitutional means.

Petitioner has responded to the questions of the Committee on this issue¹⁸ and has indicated his profound disagreement with any doctrine or advocacy of overthrow of the government by force and violence or other unconstitutional means. Petitioner has stated that any doctrine of force or violence is inimical to his char-

¹⁷This despite the fact that in 1956 the respondent cavalierly dismissed the letters submitted by petitioner at the first hearing by saying that "moreover the doubts with respect to petitioner arose primarily in specific areas such as those relating to the communist party and the failure of any of the letters to indicate an awareness of these areas of doubt materially lessened their value" (Resp. Br. (1956) p. 58, (fn.)). It would appear from this that respondent's sole concern was to force petitioner to subservience rather than to pursue the true facts.

¹⁸It has been pointed out both before the Court at the 1956 term and in the current petition for Writ of Certiorari that the constitutionality of the Section 6064.1 of the Business and Professions Code of the State of California might well be subject to challenge.

acter and contrary to any views which he has ever expressed publicly or privately.¹⁹ In this connection it is pointed out that Exhibits introduced at the first hearings before the Committee of Bar Examiners and before this Court at the time of the first decision indicated that even in writing in the public press petitioner had at all times expressed abhorrence of any doctrine of force and violence.²⁰

On this issue, also, the Committee of Bar Examiners found that petitioner had failed to meet his burden of proof. This Court examined the issue and reached its conclusion that

"In this case we are compelled to conclude that there is no evidence in the record which rationally justifies the finding that Konigsberg . . . failed to show that he did not advocate forceful overthrow of the government." (353 U. S. 252, 273.)

Wherein has the record changed one iota since this Court made its findings as set forth above?

The only change is one more favorable to Konigsberg. The only evidence introduced establishes even more conclusively his disbelief in and that his fundamental character is contrary to advocacy of any doctrine of overthrow of the government by force and violence or other unconstitutional means. The testimony of the one live witness and the additional letters introduced into the record add additional proof of petitioner's character in this particular. With an additional two years in which to investigate and find a scintilla of evidence to the

¹⁹1960 Record, pages 20-21.

²⁰1956 Record, page 173.

contrary not one shred of new evidence has been introduced against the petitioner." How then is it possible to reach any conclusion other than that the record remains that petitioner has shown that petitioner complies with Section 6064.1 of the Business and Professions Code?

4. *Where Applicant Has Complied Fully With All Statutory Requirements, It Is a Denial of Due Process for Respondent to Deny Him Admission to the Bar.*

The record thus shows conclusively compliance with the only two statutory requirements of the laws of the State of California. There are no decisions of the Courts of the State of California and no Rules of the Committee of Bar Examiners which authorize denial of admission to petitioner where he has so complied.

As Mr. Justice Peters stated in his minority opinion in the California Supreme Court

"... it is the law of this case that the record before the Supreme Court of the United States established, as a matter of law, that applicant without conflict proved that he possessed a good moral character and was a loyal citizen. The present record is even stronger in this respect. It is to be taken as established as a matter of law that applicant possesses such a character and is loyal, the relevancy is that he refused to answer questions as to his political affiliations. That whole thing that mere refusal to answer the questions justified refusing certification, under the circumstances here, necessarily violates the law of the case as established by the High Court."

B. The Requirement That Petitioner Answer Questions Relating to His Political Associations and Affiliations, as Applied to the Facts of This Case Is Arbitrary and Capricious and a Denial of Due Process of Law.

It is not essential for a determination of this case that petitioner consider whether under any other circumstances of any other case the unanswered questions put to the petitioner here would or could be relevant.²¹

It is the belief of petitioner that asking the questions propounded by the Committee of Bar Examiners to Konigsberg in this case in the light of the history of the proceedings in this case and on the record of this case was an arbitrary and capricious act on the part of the Committee of Bar Examiners.

The Committee was well aware of and purported to be following the decision and opinion of this Court and knew that a finding of good moral character and non-belief in doctrines of force, violence or unconstitutional actions had already been made by this Court. The Committee well knew that the only way in which action could be taken to deny Konigsberg's admission to the Bar was by the presentation of affirmative evidence contrary to these findings and meeting what now became a clear burden of proof on the Committee.²²

²¹While petitioner is not required for purposes of determination of the facts of this case to reach a decision on this matter petitioner certainly would not back away from the position asserted before this Court at the previous hearings to the effect that questions relating to an applicant's political beliefs or associations are not relevant to the issue of determining the moral or educational requirements for the practice of law.

²²See the Dissent of Justice Traynor in this case:

"Whatever its relevancy in a particular context, however, it is an extraordinary variant of the usual inquiry into crime, for the attendant burden of proof upon any one under ques-

The Committee chose, on the contrary, not to present any such evidence²³ but instead sought to avoid the effect of the Court decision by forcing petitioner into a refusal to answer questions which the Committee well knew could not have any proper effect upon their admitting or denying petitioner to the Bar.

Petitioner had taken an honest, forthright, principled, and consistent position in regard to the self-same, identical, questions at the first hearings. This Court had held that his refusal to answer these questions was principled and that this refusal under the circumstances of this case did not provide a basis for refusing admission to the Bar.

tion poses the immediate threat of prior restraint upon the free speech of all applicants. The possibility of inquiry into their speech, the heavy burden upon them to establish its innocence, and the evil repercussions of inquiry despite innocence, would constrain them to speak their minds so non-committally that no one could ever mistake their innocuous words for advocacy. This grave danger to freedom of speech could be averted without loss to legitimate investigation by shifting the burden to the examiners. Confronted with a prima facie case, an applicant would then be obliged to rebut it.

"Such a procedure is logically dictated by *Speiser v. Randall*, 357 U. S. 513 [78 S. Ct. 1332, 1352, 2 L. Ed. 2d 1460]. The court there assumed that the state could deny a tax exemption to one whose advocacy of the unlawful overthrow of the government was such that it could be punished as a crime. Mindful of the risks to free speech, however, it took care to hold that the state could not compel the taxpayer to prove his right to an exemption and that therefore an oath as to his innocence of unlawful advocacy could not be required. There may be differences of degree in the public interest in the fitness of the applicants for tax exemption and for admission to the Bar. Even though the state may have more at stake in the latter situation, it is not therefore freer to endanger free speech needlessly."

²³Obviously no such evidence was or is available and the Committee knew this to be the fact.

This Court had found that there was no statute nor was there any decision of court nor was there any rule of the committee which permitted the arbitrary denial of admission by reason of refusal to answer these questions.

Nevertheless and in the light of these facts and in the light of their foreknowledge that petitioner could not in good moral conscience respond to the questions, the Committee persisted in putting the questions to petitioner and insisting upon an answer.

What alternatives did this action on the part of the Committee place before Konigsberg? What opportunities did it give the Committee?

The Committee informed Konigsberg that if petitioner refused to answer his application would be denied for that reason alone. Since there was no rule of the committee or statute or decision which permitted this refusal in and of itself, to become a basis for denial of admission to the Bar, the Committee could not properly deny petitioner admission for his refusal to answer alone.

On the other hand if the morally corroding demands of expediency were to convince the petitioner that he should waive his moral principles and respond to the Committee's questions—what then?

The Committee would then have forced petitioner into a position where by their own rules and definitions they would then have had to deny him admission to the Bar also. How could the Committee admit a man to the Bar where by his own admissions he had become an immoral person when he relinquished his moral principles for purposes of expediency and personal gain. Would

such a person be expected to protect the interest of his client without regard to personal or private gain? Thus, the Committee would have forced petitioner into an immoral act and could then have denied him admission to the Bar for having committed this highest of immoral acts—the denial of one's own principles for personal gain.

Under these circumstances the very asking of the questions became an arbitrary, capricious act on the part of the Committee and a denial of due process of law insofar as it applied to this petitioner and under the facts of this case. The questions were calculated and designed to deny petitioner admission to the Bar regardless of his response.

C. The Judgment Below Is Inconsistent With the Opinion of This Court.

1. *The Denial of Admission to the Practice of Law for Refusing to Answer These Specific Questions Was Arbitrary and Capricious Since It Was Not Permitted by Any Law, Decision or Rule.*

The Committee of Bar Examiners and the Supreme Court of California below, bases its refusal to admit petitioner on this statement appearing in the decision of the majority of this Court in the 1957 decision:

"If it were possible for us to say that the Board had barred Konigsberg solely because of his refusal to respond to its inquiry into his political associations and his opinions about matters of public interest, then we would be compelled to decide far-reaching and complex questions relating to freedom of speech, press and assembly. There is

no justification for our straining to reach these difficult problems when the Board itself has not seen fit, at any time, to base its exclusion of Konigsberg on his failure to answer. If and when a state makes failure to answer a question an independent ground for exclusion from the Bar, then this Court, as the cases arise, will have to determine whether the exclusion is constitutionally permissible. We do not mean to intimate any view on that problem here nor do we mean to approve or disapprove Konigsberg's refusal to answer the particular questions asked him." (353 U. S. 252, 261-262.)

The Committee ignored completely the preceding paragraph and in so doing has fallen into the vice which brings this matter before this Court. This paragraph read:

"There is nothing in the California statutes, the California decisions, or even in the rules of the Bar Committee, which has been called to our attention, that suggests the failure to answer a Bar Examiner's inquiry is, ipso facto, a basis for excluding an applicant from the Bar, irrespective of how overwhelming is his showing of good character or loyalty or how flimsy are the suspicions of the Bar Examiners. Serious questions of elemental fairness would be raised if the Committee had excluded Konigsberg simply because he failed to answer questions without first explicitly warning him that he could be barred for this reason alone, even though his moral character and loyalty were unimpeachable, and then giving him a chance to comply. In our opinion there is noth-

ing in the record which indicates that the Committee, in a matter of such grave importance to Konigsberg, applied a brand new exclusionary rule to his application—all without telling him that it was doing so." (353 U. S. 252, 260-261.)

There was no statute which permitted denial of Konigsberg's petition for admission to the practice of law in the light of his "overwhelming showing of good character and loyalty"; no new statute has been passed since that date and even if it had could not properly be applied to the *Konigsberg* case.²⁴

There have been no decisions of the Supreme Court of California prior to the decision of the Court in this case.

There was no formal rule of the Bar Examiners in effect at the time of the Supreme Court decision and no new rule has been passed since the Supreme Court decision.

All that has happened in this case is that by arbitrary and capricious action the members of the Committee of Bar Examiners declared in an across-the-table conversation with Konigsberg that if he declined to answer the questions they would consider this a sufficient ground for denying him admission to the bar without more. This was simply a matter of committee fiat determined at the moment and without authority or precedent in the law.

²⁴To the contrary the record is very clear that numerous efforts to pass such a statute or even related statutes have failed in the legislature and before the State Bar itself. See Footnote 20 on page 38, *infra*.

Under these circumstances it cannot be said that there is any change whatsoever from the status of the case when it was before this Court in the 1956 term.

2. *Respondent Failed to Follow the Mandate of This Court and in so Doing Denied Petitioner Due Process of Law.*

The Supreme Court of California refused to certify petitioner in 1953 even though petitioner had completed his educational requirements and had satisfactorily passed the California Bar examination. The State Supreme Court without opinion (although three justices dissented) denied the petition for review and it was thereafter that this Court granted certiorari and heard argument as to the constitutional issues raised by this denial.

This Court concluded its opinion by stating that:

"The judgment of the court below is reversed and case remanded for further proceedings not inconsistent with this opinion".

The only action consistent with this opinion was the admission of *Konigsberg* to the practice of law in the State of California. Any other action was inconsistent with the opinion and a denial of due process of law and equal protection of the law as to petitioner.

The Court stated the issue in the first *Konigsberg* case clearly and unequivocally:

"We now pass to the issue which we believe is presented in this case: Does the evidence in the record support any reasonable doubts about Ko-

nigsberg's good character or loyalty to the governments of state and nation?" (*Konigsberg v. State Bar*, 353 U. S. 252.)

This question is then answered clearly in the negative when the Court says:

"When these items are analyzed, we believe that it cannot rationally be said that they support substantial doubts about Konigsberg's moral fitness to practice law."

And again

"On the record before us, it is our judgment that the inferences of bad moral character which the Committee attempted to draw from Konigsberg's refusal to answer questions about his political affiliations and opinions are unwarranted."

And then finally the Court concluded that

"without some authentic reliable evidence of unlawful or immoral actions reflecting adversely upon him, it is difficult to comprehend why the State Bar Committee rejected a man of Konigsberg's background and character as morally unfit to practice law." (353 U. S. 252, 266, 270-271, 273.)

The Committee of Bar Examiners in making its report to the Supreme Court of California treated the case as though it were a new case coming before the Committee with an applicant who had no prior record before the Committee and who had not taken his case before the United States Supreme Court. The Committee of Bar Examiners treated the matter as though it was possible to approach Mr. Konigsberg in some kind of an historical vacuum in which the past had

never happened, this Court had never heard the case and a Bar applicant by the name of *Konigsberg* was in some capricious manner refusing to answer questions of vital importance to the Committee.

It is not for this petitioner to discuss the legal effect of such a hypothetical case because this is not and was not the *Konigsberg* case at the time of the last hearing before the Committee of Bar Examiners.

It has already been pointed out that contrary to the statement of the Committee of Bar Examiners in its report to the Supreme Court the refusal to answer questions by *Konigsberg* did not constitute an obstruction of the investigation of the Committee but in fact constituted a moral dilemma for *Konigsberg* wherein any answer that he gave to the question would provide a basis for the Committee to deny him admission to the Bar.

The Supreme Court of California appears to assume that the mandate of this Court was that the Committee of Bar Examiners should simply call *Konigsberg* back and warn him that his failure to answer questions would in and of itself constitute a basis for denying him admission to the Bar.

But as Mr. Justice Peters in his dissenting opinion in the California Supreme Court said "It is certain the Supreme Court could not have meant that without a statute or rule the Board of Bar Examiners could create a 'rule' simply by warning *Konigsberg* that the effect of refusal to answer would be to cause the Board to refuse his certification. Such a warning coming four years after *Konigsberg* first appeared before the Committee does not comply with 'rules of elemental

fairness' as required by the Supreme Court of the United States." (*Konigsberg v. State Bar*, 52 Cal. 2d 769.)

D. The Formulation of a Brand New Exclusionary Rule and Applying It Solely to the Petitioner Herein Constitutes a Denial of Due Process and Equal Protection of the Law.

The Committee and the Court below attempt to predicate their decision on the formulation of some sort of a "rule" which allows denial of admission to the Bar to Konigsberg solely by reason of his refusal to answer questions which they considered to be relevant.

Petitioner has already pointed out that no such rule or statute or law or decision existed or exists in the laws of the State of California but for purposes of this phase of the discussion we shall approach the subject as though the action of the Committee of Bar Examiners could by some fiat be raised to the dignity and stature of a rule.

The Committee of Bar Examiners in 1954 clearly spelled the basis upon which they were denying petitioner admission to the Bar. They stated that he had failed to meet his burden of proof that he was a person of good moral character and that he had failed to meet his burden of proof that he did not advocate the overthrow of the government by force and violence or other unconstitutional means.²⁵ These were stated as the

²⁵The letter from the Committee of Bar Examiners to Konigsberg dated May 17, 1954 read in part:

"It is the Committee's determination that you have not sustained the burden of proof (1) that you are possessed of the good moral character required by Section 6060(c) of the State Bar Act or (2) that you comply with the provisions of Section 6064.1 of Said Act."

basis of their action. The Supreme Court of California refused to review.²⁶ It thereby approved the basis of the action by the Committee of Bar Examiners.

Any unspoken rule existing today providing for the exclusion of an applicant solely for refusal to answer a material question existed at the time of the previous hearing²⁷ yet such a "rule" was not set forth as a ground for the denial of the petitioner and in fact the very contrary was true.²⁸ The Committee of Bar Examiners in the State of California selected its basis for denial. It spelled out that basis in its own decision and in its briefs before this Court. Now and only after this Court passed upon the merits of that basis has the Committee shifted its ground and endeavored to find some other basis upon which to continue to deny petitioner his constitutional rights.

This Court has frequently stated that administrative officials may not exceed their statutory powers or even their own self limiting regulations when dealing with employment of personnel. Thus in *Peters v. Hobby*, 349 U. S. 331, 75 S. Ct. 790 (1955); *Cole v. Young*, 351 U. S. 536, 76 S. Ct. 861 (1956) and *Service*

²⁶April 20, 1955.

²⁷The Committee has at no time suggested that any formal rule has ever been promulgated by it either before or since the first *Konigsberg* hearings.

²⁸See the respondent's brief before this Court in the October Term of 1956 where the entire document is predicated on the fact that petitioner had failed to meet his burden of proof and that he was being rejected on the basis of evidence presented which raised inferences of bad character. See particularly Section F of the respondent's brief, pages 41-55, where Respondent relies on matters found in the record of the first hearing which this Court held to be inadequate grounds.

v. Dulles, 354 U. S. 363, 77 S. Ct. 1152 (1957), this Court held that the government officials had exceeded their own defined authority.

This attack upon the constitutional rights of the petitioner is the more serious where it takes place after judicial determination that the first basis for the exclusion of the petitioner was unconstitutional.

As Mr. Justice Peters stated in his dissenting opinion before the California Supreme Court

"How many times does the issue of whether applicant possesses a good moral character and is a loyal citizen have to be tried? Those were the issues presented. Having sustained his burden as to those issues, on what rational theory can it be held that the State Bar, at this late date, with no new evidence, can offer a new and different excuse for denying certification? When does this litigation come to an end? I had always thought, until I read the majority opinion in this case, that our system of law was predicated on the fundamental theory that, when issues were between litigants have once been determined, they cannot be relitigated. I had always thought that litigants were required to raise all relevant issues in one proceeding. I had assumed that parties cannot litigate their case piecemeal."

In this situation it would appear that the Committee of Bar Examiners has carefully tailored a rule and formulated it for the first time in a manner designed and calculated to deprive this particular petitioner of his constitutional right to practice the profession of his own choosing. Such a rule if indeed it is a rule has

all of the earmarks of a bill attainder (See *United States v. Lovett*, 328 U. S. 303, 66 S. Ct. 1073 (1946)).

How else can such a rule be interpreted when concededly it has never existed before this Court's decision and where it is utilized solely for the purpose of avoiding the effect of the decision of this Court in this particular case.²⁰

²⁰It should be noted in this connection that the legislative history of bills attempting to accomplish by legislation what the Committee of Bar Examiners here has endeavored to do by retroactive rule would indicate that the acts of the Committee are contrary to the legislative intent of the State of California.

In 1949, Senator Jack Tenney introduced Senate Bill 298 proposing a loyalty oath for lawyers and applicants for the Bar, and proposed that investigations of loyalty based upon the files of the Attorney General and investigating committees among other things be utilized in determining the loyalty of lawyers and applicants. This bill was opposed by the Board of Bar Governors of the State Bar of the State of California and representatives from the State Bar appeared before the legislature and at least in part as a result of such appearance the bill was not passed by the State legislature.

In 1954 a bill was introduced by Senator Burns, successor to Senator Tenney as Chairman of the Senate Committee on UnAmerican Activities. Senate Bill 1666 would have required attorneys to disclose connection with organizations which advocate the forceful overthrow of the government. It was in this session of the Legislature that Section 6064.1 of the Business and Professions Code was passed.

In 1955 further amendments to the Business and Professions Code were proposed to the State Bar of California providing for discipline of attorneys in the event of advocacy of forceful overthrow of the government or membership in an organization which so advocated and including provisions for punishment of

E. It Is Arbitrary, Unreasonable, Capricious and a Denial of Petitioner's Liberty and Property Without Due Process of Law to Deny Him Admission to the Bar Solely Because of His Refusal to Reveal His Political Affiliations. .

1. *The Questions Asked Fall Within the Constitutionally protected Area of Freedom of Speech, Press and Association.*

It is clear that states through their properly constituted agencies such as their Committee of Bar Examiners have the right to protect citizens of the state from unethical and unskilled attorneys and to establish proper rules and regulations to exclude incompetent persons or unprincipled persons from the Bar.

In California persons have been denied admission to the Bar for proof of commission of acts involving moral

attorneys who refused to answer questions relating to membership in organizations of the nature referred to above. Hearings were held formally in Los Angeles and San Francisco on these proposals. Over 1100 lawyers within the State of California formally notified the State Bar of their opposition to these proposals and the Board of Governors of the State Bar of California rejected all portions of these recommendations which could have had the effect of requiring answers from lawyers pertaining to association with particular organizations. Even the limited portion of the original proposal which eventually became Assembly Bill 1800 in the 1955 State legislative session was defeated by the State Legislature.

Thus it is clear that every effort to incorporate into law in California the purported rule which the Committee of Bar Examiners has utilized as a basis for denying admission to the Bar to the petitioner has been defeated either by the Board of Bar Governors of the State Bar of California or by the State Legislature.

turpitude and bearing directly on their competence as attorneys or for deficiencies in their moral principles.³⁰

In the first *Konigsberg* case before this Court the State of California asserted that writings of the petitioner of a political nature and alleged associations of the petitioner were sufficient to allow the State to draw the conclusion that petitioner had not met his burden of proof that he was of good moral character and did not advocate the overthrow of the government by force and violence or other unconstitutional means.

The respondent now appears ambivalent in its approach to the case. Respondent argues that the only reason why petitioner is being excluded is because he has declined to answer relevant questions put to him by the Committee. Yet respondent discloses its own dilemma in the "brief in opposition to the petition for writ of certiorari" and in the argument of this case before the Supreme Court of the State of California when it utilizes the same information and makes the same inferences from the evidence presented in the first

³⁰Thus in *In re Garland*, 219 Cal. 661, 28 P. 2d 354 the petitioner was a convicted forger; in *In re Wells*, 174 Cal. 467, 163 Pac. 367 the petitioner was guilty of committing a fraud upon the court in a prior proceeding; in *In re Hovey*, 7 Cal. Unrep. 203, 81 Pac. 1019, disbarment proceedings involving commission of a crime had been instituted against the applicant in another state; In *Spear v. State Bar of California*, 211 Cal. 183, 294 Pac. 697, the applicant made false affidavits accompanying his application. There is no reported case in California in which the applicant was denied admission by reason of his political associations or affiliations or his refusal to answer questions regarding such associations or affiliations.

hearing as a basis for establishing the relevancy of the questions which petitioner declined to answer.³¹

Yet only by utilizing these inferences could the committee find a basis for its contention that the questions asked were relevant.

It is true that when a man is denied admission to the Bar of a State because of fraudulent actions in the past or because of some unprincipled acts or falsification of statements before the Committee of Bar Examiners, he is being denied the right to practice the profession of his own choosing. But in such case this denial is based upon specific acts on the part of the petitioner and these specific acts directly relate to the requirements of the practice of law.

In the instant case the denial to petitioner is based not upon any acts whatsoever³² but is based upon his failure to answer questions relating to his political beliefs, associations or membership.

There can be no question that one of the inalienable rights of a citizen is the right to practice a profession of his own choosing. "The theory upon which our

³¹To understand this ambivalent position of the State Bar one need only read pages 30 to 36 of the transcript of the oral argument before the Supreme Court of California in which counsel for the State Bar read at great length from the selfsame articles introduced at the first hearing wherein this Court held that "We do not believe that an inference of bad moral character can rationally be drawn from these editorials."

³²Except insofar as the Committee of Bar Examiners is in fact denying him admission now for the selfsame reasons they denied him admission in 1953 but are assigning different reasons in order to avoid the effect of the courts prior defusion.

political institutions rest, is that all men have certain inalienable rights—that among these are life, liberty and the pursuit of happiness; and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to everyone, and that in the protection of these rights, all are equal before the law". (*Cummings v. Missouri*, 4 (Wall.) U. S. 277, 321).³³

In addition we are here dealing with questions involving freedoms protected by the First Amendment to the Constitution which have a "preferred place . . . in our scheme (of government) . . . not permitting dubious intrusions" (*Thomas v. Collins*, 323 U. S. 516, 529).

This Court has frequently weighed in the balance restrictions on the fundamental right of freedom of speech and press and assemblage against the importance or value to the State in particular area in which it proposes to restrict these rights.

Only in the prior *Konigsberg*³³ case and in the case of *Schwartz v. Board of Bar Examiners of State of New Mexico*³⁴ have these relative values of the State against the rights of the individual prospective lawyer been so weighed. In both of these cases this court properly found that restrictions on freedom of expression had been improperly applied in the State below. It should be noted at this point that not only are we in the highly sensitive field of possible infringement on the

³³See also *Truax v. Raich*, 239 U. S. 33, 38; *Yick Wo v. Hopkins*, 118 U. S. 356, 370; *Allgeyer v. Louisiana*, 165 U. S. 578, 589; *Smith v. Texas*, 233 U. S. 630, 636; *Mayer v. Nebraska*, 262 U. S. 390, 399; *Takahashi v. Fish Commission*, 334 U. S. 410.

³⁴353 U. S. 232 (1957).

First Amendment Constitutional rights of the petitioner but we have entered this field by the thin thread of an inference and an even thinner thread of failure to answer questions the relevancy of which is predicated on that same inference.

It is true that petitioner has a legal burden of proof and in the normal case must carry that burden forward. But in the present case this very court has said that petitioner has met every burden of proof placed upon him by the decisions, statutes or rules of the State of California. Respondent now comes forward and at this late stage asks questions without introducing any evidence of wrongdoing or any other evidence justifying the asking of the questions which fall within the critical area of the First Amendment. Certainly under these circumstances the balance of the State's interest as against the interest of the individual must be resolved on the side of the individual.³⁵

³⁵See testimony of Professor Thomas I. Emerson of Yale University Law School in the contempt trial of one Edward Yellin at Hammond, Indiana on March 10, 1960 quoted in full in *20 Lawyers Guild Review*, 41, 49 (1960), where he says:

"For instance, in my classes, both in constitutional law, in connection with the *Konigsberg* case, and in political and Civil rights, there has been discussion as to whether members of the Communist Party should be allowed to be members of the bar. I know from the discussion in class, which I think is reasonably open, what the views of the various members of the class on this may be. The majority of them, rather large majority, have at least stated the position, and I think it is their correct position, that whether a lawyer is a member of the bar should not depend upon whether he is a member of the Communist Party but upon the qualifications, the merits. When, however, the students were called before the character committee for admission to the bar they were asked the question, in many instances, as to whether or not they believed a member of the Communist

This is particularly true because we are dealing in an area particularly sensitive because it involves the independence of the Bar.

Mr. Justice Black in this very case made this point clear when he pointed out that

"We recognize the importance of leaving states free to select their own Bars, but it is equally important that the state not exercise this power in an arbitrary or discriminatory manner nor in such a way as to impinge on the freedom of political expression or association. A Bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedom in order to obtain that goal. It is also important both to society and the Bar itself that lawyers be unintimidated—free to think, speak and act . . ."³⁶ (353 U. S. 252, 273.)

It seems clear that the apparent rights of the State upon which the Committee seeks to rest its intrusion

Party should be a member of the bar. Many of them, contrary to the view that they had expressed privately, expressed the view that a Communist should not be admitted to the bar. That I think is an indication of the most unfortunate consequences of an attitude for which I think the legislative committees are very largely responsible.

"It seems to me a very poor way for a person to enter the legal profession, by being forced to conceal his views on peril of knowing that he will be in difficulties if he does not. And it is that kind of an impact, as well as the impact of being noncommitted and unwilling to participate in the solution of significant problems that I think is quite widespread as the result of inquisitions, or investigations, pardon me, of legislative committees."

³⁶See for further discussion of this point the petitioner's discussion in connection with the *Beilan* and *Lerner* cases.

into the personal views, beliefs and associations of the petitioner is predicated upon the assumption that the answers to the questions asked might lead the Committee to some information about petitioner which could ultimately lead them to the conclusion that he advocates the overthrow of the government by force and violence.

The petitioner however has never once refused to answer the questions directed to the ultimate fact which the Committee must decide. Time and time again petitioner informed the Committee that he would answer any questions regarding facts which indicated that he had such belief or advocacy. He promised to answer any question relating to specific facts but the Committee brought forward no such facts³⁷ nor asked any questions indicating the existence of any such facts. This court has pointed out that simple membership in the Communist Party without scienter could not become the basis for punitive actions against individuals.³⁸

Yet here the accusation of past membership in the Communist Party was made on the slimmest of evidence which this Court has found did not provide a sufficient basis for a finding that petitioner had not met his burden of proof that he had good moral character. That same testimony clearly indicated that petitioner had not been involved in any acts of force and violence. What therefore could the respondent gain by asking

³⁷Although required by their own rules and the statement of their own counsel that they would do so if they had any such facts.

³⁸*Wieman v. Updegraff*, 344 U. S. 183; *Slochower v. Board of Higher Education*, 350 U. S. 551.

the same questions which petitioner had on high moral principles declined to answer at the previous hearing? The answers to the questions could avail the committee nothing unless they had additional evidence upon which to predicate their subsequent denial of admission to the Bar. Even had the petitioner answered the questions at issue in the affirmative it would have still been necessary for the respondent to establish scienter in order to deny him admission to the bar.³⁹ Petitioner denied that he had ever participated in any acts involving force and violence or that he had belonged to any organization which advocated or participated in any such acts. This denial constituted a denial of the ultimate facts which the respondent must prove in order to justify a denial of admission. Since petitioner denied that he knew of any such acts or that he had participated in any such acts, only by bringing forward evidence of such acts would the respondent have been in a position to proceed further against him and in this area petitioner always indicated his willingness to cooperate to the complete satisfaction of the Committee but the Committee did not bring forward any evidence because no such evidence existed.

³⁹Respondent concedes in its "brief in opposition to petition for writ of certiorari" that simple past membership in the Communist Party was not a sufficient basis to deny admission to the Bar of California. Note also in Exhibit B that the same Committee of Bar Examiners had admitted a petitioner who conceded that he had previously been a member of the Communist Party.

2. *Decisions of This Court in the Beilan and Lerner Cases Are Distinguishable.*

Without discussing the validity of the position of the majority of this court in the cases of *Beilan v. Board of Public Education*, 357 U. S. 468, and *Lerner v. Casey*, 357 U. S. 468, petitioner asserts that these cases are distinguishable from the *Konigsberg* case.

It is basically the position of petitioner that the only decision which governs the facts of the *Konigsberg* case is *Konigsberg v. State Bar*, 353 U. S. 252, and that the facts of the present case differ in no degree from the facts presented to this court in the 1956 term.

In the *Beilan* case, however, Mr. Justice Burton pointed out that the Pennsylvania Supreme Court had previously held that "incompetency" included "deliberate and insubordinate refusal to answer the questions of his administrative superior in a vitally important matter pertaining to his fitness." Thus, the court was not drawing any inferences from the refusal to answer but merely equating refusal to answer with incompetency as previously determined by the courts of Pennsylvania. Similarly, in the *Lerner* case the determination to discharge the plaintiff for his failure to answer questions was predicated on a statute which permitted a finding of "lack of candor" to be equated with "doubtful trust and reliability."

Konigsberg relied solely on his right to be free from questions regarding his political affiliations and asso-

ciations under the first amendment to the constitution. This court held that his position in this connection was not frivolous and there was no showing that it was not based upon high principle. Nothing in the record of the subsequent proceedings changes this conclusion in the slightest.⁴⁰

Both Beilan and Lerner were employees of governmental agencies. The standard to be applied in both of these cases was a standard established for master-servant or employer-employee relationship.⁴¹

No employer-employee relationship exists between the State of California or the State Bar of California and an applicant for admission to the independent practice of law. Nothing could be more corroding to our society than a situation in which the lawyer became beholden to the State in the same manner that an employee must be beholden to his employer.

Of all of the professions existent within our society, no profession has a greater requirement for independence and a greater need to avoid the relationship of master-servant with the State or any agency of the State. One of the primary responsibilities of the lawyer is to protect the rights of the individual from encroachment by the State, and by the same token it is

⁴⁰It should be noted in this connection that both Beilan and Lerner relied principally upon the protections of the Fifth Amendment.

⁴¹In the brief filed by appellee Casey in the *Lerner* case before this court, the writer distinguished the *Konigsberg* case from the *Lerner v. Casey* case by pointing out that no "employer-employee" relationship existed in the *Konigsberg* case and that this provided a distinguishing characteristic from the *Lerner v. Casey* situation (see appellee's brief before this court dated February 24, 1958 at page 19).

the lawyer who must protect the State against encroachments on society by the individual. Only by remaining free and independent can the legal profession properly and adequately perform this vital function in the working of our democracy. If for one moment we allow the attitude to prevail that the lawyer is simply an employee of the State, or the servant of the State, from that moment onward the citizens of our society will have lost their most precious advocate and protector—the independent lawyer.

The holdings with regard to an employee-subway worker and/or an employee-teacher cannot be equated with or become authority for a ruling in connection with an applicant for a license to enter a free and independent profession.

Beilan and *Lerner* are further distinguished from the *Konigsberg* case in that in this case the petitioner refused to answer questions which were propounded to him only after he had established the basic facts which he was called upon to answer under the law: (1) That he was of good moral character and (2) that he did not advocate or believe in the overthrow of the government by force or violence or other unconstitutional means.

In both *Beilan* and *Lerner* the questions were asked for the first time under circumstances which this court, at least, held indicated that the law of the State involved required a response to the questions. In the *Konigsberg* case this court had already held that there was no justification in the laws or the statutes or the decisions of the State of California requiring *Konigsberg* to respond to the questions under penalty of being denied admission to the Bar if he failed to so re-

spond. Thus, in *Beilan* and *Lerner* the questions were apparently asked in a timely manner and in accordance with the laws of the State involved in each case. In *Konigsberg* the questions were asked only after a Supreme Court decision, and at a time when "elemental fairness" required that the State admit *Konigsberg* without further questions.

It is clear, therefore, that in addition to the basic principles involved in the freedom and the rights of the lawyer, we find that these cases are distinguishable by reason of the court's interpretation of the laws of the State involved.⁴²

When one places in balance the need for a free and independent Bar composed of persons of high moral principle, and dedicated to the preservation of those principles without concern for the benefits or gains of actions based on the expediency of the moment, it becomes clear that the interest of the State of California in securing answers to the questions propounded to *Konigsberg* becomes of little importance in the scales, and that the *Konigsberg* case is clearly distinguishable from prior decisions of this court in which the scales have been balanced in a contrary manner.

⁴²The *Barenblatt* case (*Barenblatt v. United States*, 360 U. S. 128) is also sometimes referred to as authority contrary to the position taken by *Konigsberg*. The *Barenblatt* case, however, deals solely with congressional powers and the rights of congressional investigating committees to inquire into matters which are of legislative import. Since we are in no wise concerned with the legislative process in the *Konigsberg* case, it is clear that the holding in *Barenblatt* cannot be used as authority to deny *Konigsberg* admission to the Bar based on the facts of this case.

VIII.
Conclusion.

For these reasons the judgment of the Court below should be reversed and upon this record the Petitioner should be adjudged entitled to Admission to the Bar of the State of California.

Respectfully submitted,

EDWARD MOSK,

Attorney for Petitioner.

SAM ROSENWEIN,
Of Counsel.

Dated: August 19, 1960.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. ~~64~~ 28

RAFAEL KONIGSBERG,

Petitioner

vs.

THE STATE BAR OF CALIFORNIA and THE COMMITTEE OF
BAR EXAMINERS OF THE STATE OF CALIFORNIA.

Motion of American Civil Liberties Union of Southern
California For Leave to File Brief Amicus Curiae
and Brief.

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IN THE
Supreme Court of the United States,

OCTOBER TERM, 1959

No. 661

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and THE COMMITTEE OF
BAR EXAMINERS OF THE STATE OF CALIFORNIA,

**Motion of American Civil Liberties Union of Southern
California for Leave to File Brief Amicus Curiae.**

The American Civil Liberties Union of Southern California respectfully requests permission to file the within Brief *Amicus Curiae* in support of petitioner's Petition for Writ of Certiorari in the above entitled cause.

Counsel for the American Civil Liberties Union of Southern California, A. L. Wirin and Hugh R. Mims, have read the record at bar and have familiarized themselves with the arguments presented by the parties hereto. This Court granted leave to file such a brief when this petitioner was last here for review. (352 U. S. 914). We believe that there is need for further argument upon one of the points only touched upon by petitioner in his Petition.

The American Civil Liberties Union believes that freedom of opinion, expression and association are pre-requisites of a democratic and thoughtful body-politic. History holds bitter lessons for those who eagerly permit government intrusion upon the individual liberties of dissenters. But of equal concern to the Union is the stealthy encroachment by the State upon fundamental freedoms in the interest of expediency or in the name of privilege. At bar is a claim made by the State of California that it may deny petitioner a license to practice law solely because of his refusal to declare, under oath, whether or not he was or is a member of the Communist Party. We believe that this, in effect, constitutes the imposition upon petitioner of a loyalty oath,¹ the taking of which, however, is not conclusive evidence of non-criminal advocacy. On the other hand, the legislative history of political test oaths for lawyers in California, and the present posture of the law negates authority for respondents' position. Consequently, the respondents are denying petitioner admission to the State Bar under *ad hoc* rules, which, as this Court already has observed in this case, raises serious questions of due process.

However, it is not only petitioner's liberty and property rights which are at stake—substantial as they are. It is also the freedom of licensees who will follow under the precedent established by this case which is the concern of the Union. It is submitted, therefore, that the Com-

¹This Court has noted probable jurisdiction, in a loyalty oath case, *Nostrand v. Balmer*, 361 U. S. 873.

mittee of Bar Examiners had no absolute right or power to inquire into petitioner's beliefs and associations. Rather, its entry into this area should only be made when possessed of clear and convincing evidence of criminal conduct.

For the foregoing reasons, it is respectfully requested that the American Civil Liberties Union of Southern California be granted permission to file the within brief in support of Petitioner's position.

Counsel for the respondent has declined to consent to the filing of this brief; as he did, upon request so to do, therefore, in *Konigsberg v. State Bar, supra*, 352 U. S. 914; he has, however, suggested to the undersigned attorneys herein, in writing, that the request for leave to file the instant proffered brief *amicus* should be made directly to this Court and that he will not oppose the granting of the motion.²

Respectfully submitted,

A. L. WIRIN and

HUGH R. MANES,

*Attorneys for American Civil Liberties
Union of Southern California.*

²Counsel for amicus herein were granted leave of Court to appear as amici by the Supreme Court of California. See decision of that Court herein "Exhibit C", Petition for Writ of Certiorari herein, page 5.

IN THE
Supreme Court of the United States

October Term, 1959.

No. 661

RAPHAEL KONIGSBERG,

Petitioner,

v.

THE STATE BAR OF CALIFORNIA AND THE COMMITTEE OF
BAR EXAMINERS OF THE STATE OF CALIFORNIA.

**Brief of American Civil Liberties Union of Southern
California, Amicus Curiae, in Support of Petition
for Writ of Certiorari.**

Section 6064.1¹ of the California Business and Professions Code excludes from certification and admission to the State Bar anyone who advocates the overthrow of government by force and violence.² Petitioner has consistently denied that he does—or ever did—so, but has nonetheless been denied a license to practice law because of his refusal (on First Amendment grounds) to declare whether or not he was—or is—a member of the

¹Section 6064.1, B & P Code: "No person who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law."

²Section 6106.1, B & P Code: "Advocating the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, constitutes a cause for disbarment or suspension."

Communist Party.³ Respondents take the position that petitioner's refusal to answer questions concerning such membership precludes a determination of whether or not he engages in criminal advocacy, and hence, his eligibility to practice law in California.⁴ *Amicus* believes that the burden of showing unlawful advocacy is upon the State, and that by attempting to shift this burden to petitioner, respondents have, in effect, imposed upon him a loyalty oath, thereby depriving him of his liberty and property without due process of law (*Speiser v. Randall*, 357 U. S. 523).

This case comes to the Court for the second time. In the original proceedings, petitioner was asked the same questions, and declined, for the same reasons, to answer them.⁵ Respondents inferred from petitioner's silence that he did not possess the requisite good moral character, and assigned this as one of the three reasons for refusing to certify petitioner to the State Bar (*Konigsberg v. State Bar of California*, 353 U.S. 252, 269-271). This Court reversed and remanded "for further proceedings not inconsistent with this opinion, noting, *inter alia*, that forty-two persons had attested to petitioner's excellent character, to his "belief in democracy and devotion to democratic ideas, his principled convictions, his honesty and integrity, his conscientiousness and competence in his work, his concern and affection for his wife and children and his loyalty to his country" (353 U. S. at p. 265). This Court also took cognizance,

³See among other places in the Record, pages 28-29 of the hearing of September 21, 1957—referred to hereafter as "1957 Hearing."

⁴1957 Hearing, pages 46-48.

⁵1957 Hearing, pages 28-31.

of petitioner's testimony "that he did not believe in nor advocate the overthrow of any government in this country by unconstitutional means" (353 U. S. at p. 271) and the fact that "no witness testified to the contrary" (353 U. S. at p. 271).

The record now before the Court in respect to petitioner's loyalty, integrity and devotion to American principles is different only in that it is amplified by further evidence adduced at the 1957 hearing held pursuant to the mandate of this Court and the Supreme Court of California.⁶ Mr. Herbert Tobin, petitioner's employer for the two and one half years preceding the 1957 hearing, testified that:

"I think he is probably the most honest man I have ever met . . . His ethics and attitudes, his sincerity, his loyalty is beyond all reproach."⁷

Mr. Tobin was not cross-examined by the respondent Committee; and twelve additional written testimonials of similar import were received into evidence—none of whose authors were called upon by respondent committee for cross-examination.⁸ Significant, too, is the concession by the State Bar that its investigator was unable to turn up any derogatory information against petitioner.⁹

Where petitioner's silence was formerly inferred by respondents as indicative of bad moral character, it is now treated as a frustration of inquiry. Yet, for whatever reason or motive, the result is the same: the State is denying petitioner admission to the Bar of Cali-

⁶1957 Hearing, pages 14-19 and pages 56-57.

⁷1957 Hearing, page 17.

⁸1957 Hearing, pages 56-57.

⁹1957 Hearing, page 58.

formia because he will not disclaim, under oath, past or present membership in the Communist Party, although such disclaimer would not be treated as conclusive evidence of non-criminal advocacy.

Freedom of speech and association are fundamental to a democratic society (*Wieman, v. Updegraff*, 344 U.S. 183, 188; *National Association for Advancement of Colored People v. Alabama*, 357 U. S. 449, 460-463). Such rights are guaranteed by the First Amendment to the United States Constitution speaking through the Fourteenth (*N.A.A.C.P. v. Alabama, supra*, p. 460), and are thus protected from abridgement by government unless and until confronted by an urgent and substantial interest of the State (concurring opinion of Justice Frankfurter, in *Sweezy v. New Hampshire*, 354 U. S. 234, 255 at p. 265).

Undoubtedly, loyalty oaths—and inquiries into one's associations and beliefs—restrict lawful activities (*American Communications Association v. Douds*, 339 U. S. 382, 393). For beliefs and associations which one fears may be questioned tomorrow, are not likely to be uttered today. Particularly is this true where the declarant bears the burden of proving the truth of his disclaimers (*Speiser v. Randall*, 357 U. S. 513).

As this Court pointed out in the *Speiser* case (357 U. S. at p. 525);

“The vice of the present procedure is that, where particular speech falls close to the line separating the lawful from the unlawful, the possibility of mistaken factfinding—inherent in all litigation—will create the danger that the legitimate utterance will be penalized. The man who knows that he must bring forth proof and persuade another of the lawful-

ness of his conduct necessarily must steer far wider of the unlawful zone than if the State must bear these burdens. This is especially to be feared when the complexity of the proof and the generality of the standards applied, cf. *Dennis v. United States*, [341 U. S. 494], provide but shifting sands on which the litigant must maintain his position." (357 U.S. at p. 526).

Of course, the guarantees of the First Amendment are not reserved simply for popular opinions or harmless fraternal orders. Freedom signifies the right to hold and discuss views which question the very heart of the existing social order (*West Virginia Board of Education v. Barnette*, 319 U. S. 624, 642). And that right, having once been exercised, is not rendered less secure with the passage of time, or upon the subsequent ascendancy of countervailing ideas (*Konigsberg v. State Bar*, 353 U. S. 252; *Schwartz v. Board of Bar Examiners of New Mexico*, 353 U. S. 232). The First Amendment does not heed the changing climates of opinion.

It follows that free speech and assembly carry with it the freedom to be silent about such matters (concurring opinion, *Sweezy v. New Hampshire*, 354 U. S. 234, 255). Freedom less than this is misnamed.

Of course, the right of self-determination as to these freedoms is not absolute, but neither is it so fragile that it must be yielded to the State with the filing of an application for a license (*Konigsberg v. State Bar*, *supra*; *Schwartz v. Board of Bar Examiners*, *supra*; compare: *Wieman v. Updegraff*, 344 U. S. 183).

While it is true that no applicant may be certified to the State Bar who engages in criminal advocacy, it does

not follow that such applicant bears the proof of negating such conduct. On the contrary, Rule X, section 101 of the Rules Regulating Admission to Practice Law, provides only that:

"The applicant shall have the burden of proving that he is possessed of good moral character, of removing any and all reasonable suspicion of moral unfitness, and that he is entitled to the high regard and confidence of the public."¹⁰

That petitioner has carried this burden, and carried it well, has already been observed by this Court (*Konigsberg v. State Bar, supra*, at pp. 265, 266), and is apparent from the additional evidence offered by petitioner at the 1957 hearing.

On the other hand, the legislative history of section 6064.1 of the Business and Professions Code of California belies the notion that an applicant for a license to practice law was under a duty to disclose his political associations or beliefs, or make declarations of loyalty as a condition of admission. Indeed, political test oaths for lawyers have been repeatedly rejected by the legislature and have been consistently disapproved by the California State Bar, even as recently as this year.¹¹

¹⁰Chapter 4, Division 3 of the Business and Professions Code of California; approved by the Board of Governors of the State Bar of California, September 8, 1937, with amendments to January 1959.

¹¹Los Angeles Daily Journal, Sept. 22, 1959, p. 1, reports that the conference of State Bar delegates at its annual meeting disapproved Resolution No. 1 which says: "Recommends that the State Bar Act be amended to provide that membership in the Communist Party is cause for disbarment." The same resolution was proposed at the October 1958 convention of the conference of State Bar delegates who refused to take any action on the resolution.

Thus, in 1949, State Senator Jack Tenney introduced into the California Senate, Senate Bill 298, which would have required every lawyer to swear that he did not advocate the forceful overthrow of government, and that he was not affiliated with any organization that did. This Bill was opposed by the State Bar,¹² and was ultimately defeated (Sen. J. p. 3748, J. y 2, 1949).

Again, in 1951, as national hysteria about, and fear of, political unorthodoxy was gaining momentum, California State Senator Hugh Burns introduced Senate Bill 1666, which called for every attorney to state under oath (1) that he did not engage in unlawful advocacy, (2) whether he was a member of an organization which so advocated, and (3) forswearing that he would ever engage in such advocacy, or join an organization that did.¹³ This Bill died in the California State Senate (Sen. J. Vol. III, p. 3977, 1951); and was supplanted by Assembly Bill 1683, which was enacted into law with the support of the Board of Governors of the State Bar,¹⁴ and became sections 6064.1 and 6106.1 of the Business and Professions Code. Significantly, the test oath provisions of Senate Bill 1666 are omitted from both of the statutes.

¹²State Bar Journal, Vol. XXIV, No. 4, July-Aug. 1949, p. 273.

¹³The Board of Bar Governors of the State Bar: "It was determined that the State Bar take no position on S.B. 1666 relating to the loyalty oath for attorneys." Vol. XXVI May-June, 1951, No. 3, p. 154.

¹⁴Vol. XXVI, May-June, 1951, No. 3, p. 156: "The Board approved the form of amendment of A.B. 1683, as part of the State Bar's legislative program, relating to advocating the overthrow of the government of the United States or of this state by force, violence, or other unconstitutional means, as preventing certification for admission to practice and as constituting a cause for disbarment or suspension."

In 1955, the State Bar Committee on Rules of Professional Conduct made several recommendations to compel disclosure of beliefs and associations (see: 29 Calif. State Bar Journal, 349 ff). Among these were proposals to discipline attorneys who personally advocated, or who were affiliated with organizations which advocated proscribed doctrines, and *attorneys who refused to answer questions relating to such speech and association*. The latter provision was incorporated within Assembly Bill 1800, but failed of passage (Calif. Assemb. final bal. 1955, p. 677).¹⁵

The foregoing legislative gloss on section 6064.1—as well as the language of that statute—seems to preclude respondents' contention that the applicant bears the burden of proving he does not engage in forbidden or criminal speech.

In *Speiser v. Randall*, *supra*, this Court held that California could not shift its burden of proving criminal advocacy by exacting a disclaimer from a taxpayer as a condition of receiving a benefit or gratuity from the State. Even so, the Court was dealing with a political test oath enacted into statute pursuant to a Constitutional provision proscribing the granting of tax exemptions to those who engaged in unlawful advocacy.

Here, however, no such statutory authority exists; and, in fact, has been specifically withheld. Yet, respondents seek to do that which it was held the State could not do even with the benefit of an enabling statute—namely, deny petitioner a license to practice law for mere

¹⁵Two other bills introduced in the legislature that year, S.B. 1814 and A.B. 1903, which would have attached political conditions on the right to practice law in California were similarly unsuccessful (Sen. J. 1955, Vol. II, p. 4440; Assemb. J. 1955, Vol. III p. 5964).

refusal to disclose, under oath, his past and present associations.

This being a government of laws, it is manifestly a violation of due process for respondents to make up exclusionary rules as they go along (*Konigsberg v. State Bar, supra*, at p. 261). The burden of showing unlawful advocacy belongs to the State (*Speiser v. Randall, supra*, and the legislature has not here attempted to relieve the State of that burden. Since respondents have themselves found no evidence of criminal advocacy or association, petitioner is obviously under no duty to disclaim such conduct, or produce evidence in support of such disclaimers (*Speiser v. Randall, supra*). Especially is this so where the disclaimer is not conclusive evidence of non-advocacy (*Speiser v. Randall, supra*, at p. 528).

The First Amendment would be an innocuous document indeed if speech could be made the hostage of licensing bodies whenever it suited their whim or convenience. The injunction against unlawful advocacy no more justifies an inquiry into the political beliefs and associations of license applicants than it gives to the Secretary of State an inherent right to pry into the beliefs and associations of passport applicants (*Kent v. Dulles*, 357 U. S. 116), or than it entitles a State to abridge the privacy of churches or veterans who come to it for a favor (*First Unitarian Church of Los Angeles v. Comm' of Los Angeles*, 357 U. S. 545; *Speiser v. Randall, supra*). While the State may go far in placing upon an applicant to its Bar the burden of showing good moral character and fitness, its action here in withholding a license from applicant because of his refusal to reveal his political associations is arbitrary and capricious. Respondents have produced no evidence whatever that

petitioner's political activities have exceeded constitutional limits, such as would require from petitioner an explanation or rebuttal. There is therefore no compelling interest of the State which warrants infringement of petitioner's liberty or the deprivation of his property.

Conclusion.

For the foregoing reason, the petition for certiorari should be granted.

Respectfully submitted,

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IN THE
Supreme Court of the United States

October Term, 1960

No. 28

RALPH KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA AND THE COM-
MITTEE OF BAR EXAMINERS OF THE STATE
OF CALIFORNIA,

Respondents.

No. 58

In Re: GEORGE ANASTAPLO,

Petitioner,

vs.

THE BOARD OF BAR EXAMINERS OF THE
STATE OF ILLINOIS,

Respondent.

**MOTION FOR LEAVE TO FILE BRIEF AND BRIEF
OF THE NATIONAL LAWYERS GUILD (AMICUS
CURIAE ON BEHALF OF PETITIONERS)**

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III. To permit inquiry into the political, social or philosophic views of lawyers would discourage the freedom and independence of thought necessary to produce great exemplary advocates; would deprive the profession of principled men, like the petitioners, who refuse to submit to such inquiry; and would stifle the leadership and courage necessary to fulfill the Bar's traditional functions 13

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

*To the Honorable Chief Justice of the
United States and the Associate Justices
of the Supreme Court of the United States:*

The National Lawyers Guild respectfully move this
Honorable Court for leave to file a brief *amicus curiae* in
these cases.

The National Lawyers Guild is a national bar associa-
tion and, as such, it is of necessity concerned with the
maintenance of an independent Bar and the promotion

of justice in the administration of the law. As lawyers, we have a special interest in the criteria for admission to the Bar, and in the application of such criteria in individual cases. Arbitrary, capricious or otherwise unlawful action in this area by administrative or court officials presents a threat to the independence of the Bar and the administration of justice. We subscribe to the view expressed by Chief Justice Taney many years ago that the power to determine who is qualified to be admitted to practice law is not "an arbitrary and despotic one, to be exercised at the pleasure of the court, or from passion, prejudice, or personal hostility; but it is the duty of the court to exercise and regulate it by a sound and just judicial discretion, whereby the rights and independence of the bar may be as scrupulously guarded and maintained by the court, as the rights and dignity of the court itself." *Ex Parte Secombe*, 19 Howard, 9, 13.

Petitioners here appear to have been excluded from their chosen profession for reasons unrelated to the nature and purpose of his calling. The calling of a lawyer requires independence of thought and action, vigorous, fearless and effective advocacy. Often it may demand the courage to support a client's cause against prevailing economic, social and political forces and, indeed, against the government itself. A lawyer will be called upon to argue even to this Court that its ruling of yesterday was in error, that its well-considered judgments should be reversed.

A lawyer is, almost by definition, a challenger to the *status quo*. For if the lawyers had not come forward to challenge long established ways of life and long-recognized precedents of government would we not still be living in a society dominated by laissez-faire economics and "separate but equal" education?

Any criterion for admission to the Bar which concerns itself with an applicant's beliefs or opinions concerning the state, or his expressed opposition to the state, or par-

ticular aspects of the existing structure of the state, or indeed, of the society in which we live, and which have the effect of excluding applicants who have in fact opposed, or are suspected of opposing those "who sit in the seats of the mighty", will hardly serve to improve the quality of the Bar. Rather, it will weaken the Bar by excluding those who may indeed be most capable of vigorous and fearless advocacy against powerful opposition. If an applicant's political views or associations are to be compulsorily disclosed as a condition to admission to practice, we may find a Bar left without members able to offer whole-hearted acceptance of the oath that many a lawyer takes upon admission: that he will "never reject for considerations personal to [him]self the cause of the helpless or the oppressed".

We do not believe that applicants for admission to the practice of the law lose their constitutional rights as citizens, nor that they can be compelled to forswear those rights as a condition for admission to the Bar. We do not believe that such persons can be treated as if they were mere applicants for a "job" or striving to enlist in the military or certain services of the United States. Petitioners here appear to have been excluded from their chosen profession for reasons unrelated to the nature and purpose of the calling which he sought to exercise. In imposing nebulous qualifications, then accusing petitioner of failing to meet them, constitutional limitations have been disregarded.

An examination of the briefs and petitions heretofore filed in this case does not indicate that these questions of public importance have been adequately covered by the parties. The National Lawyers Guild therefore asks leave to file the brief herein *amicus curiae*. We are gravely concerned with the issues involved because the radical effect of a decision on this case will extend beyond the borders of the states involved affecting the right of persons not only

to pursue their chosen professions in the states but in the federal jurisdiction as well.

This *amicus curiae* has previously filed a brief *amicus curiae* in *Konigsberg v. The State Bar of California and the Committee of Bar Examiners of the State Bar of California*, 353 U. S. 252. It has also filed a brief *amicus curiae* in *Anastaplo v. The Board of Bar Examiners of the State of Illinois*, 3 Ill. 2d 471.

The petitioners have consented to the filing of this brief. The respondent in No. 28 has refused to consent; the respondent in No. 58 by whom a late request was made has not yet replied.

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Respondent.

**BRIEF OF THE NATIONAL LAWYERS GUILD
(AMICUS CURIAE ON BEHALF OF PETITIONERS)**

Introduction

The NATIONAL LAWYERS GUILD is a national bar association, among whose fundamental principles is the articulation and preservation of basic constitutional rights and liberties. It is because we perceive in these cases an impact upon the rights and liberties of the bar and the public at large, which extends beyond the vital rights of the petitioners themselves, that we respectfully submit this brief.

This Court, in its opinion on the first hearing of the *Konigsberg* case (353 U. S. 252) declared that the interests of the State do not warrant the sacrifice of those "vital freedoms" that will be endangered by lack of lawyers free to think, speak, and act as members of an independent bar" (353 U. S. 252, 273).

Similarly, Mr. Justice Frankfurter, with whom concurred Mr. Justice Clark and Mr. Justice Harlan, in his concurring opinion in *Schwartz v. Board of Bar Examiners* (353 U. S. 232, 247), stated:

"The bar has not enjoyed prerogatives; it has been entrusted with anxious responsibilities. . . . [A]ll the interests of man that are comprised under the constitutional guarantees given to 'life, liberty and property' are in the professional keeping of lawyers. It is a fair characterization of the lawyer's responsibility in our society that he stands 'as a shield', to quote Devlin, J., in defense of right and to ward off wrong."

It is our profound conviction that real meaning is given to the constitutional guarantees of the right to counsel, the right to a fair trial and to due process of law only through the existence of staunch lawyers who champion those rights on behalf of the defendant, the litigant and the public. It is also firmly embedded, we believe, that in the public forum of ideas and in the legislative process, the lawyer plays a singular role. He is the knowledgeable exponent of the traditions, rights and liberties derived from the past and the articulate spokesman for the ideas, viewpoints and opinions of the present and future which contend for development into public policy and law.

We do not claim special privileges for the lawyer as such. We do claim that the lawyer's role is so vital to the fundamental freedoms of our society and to the proper and just functioning of its legislative and adjudicative processes that the lawyer must remain free from coercion or intimi-

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dation, whether its source is a mob, a special interest, the government, the courts or the organized bar.

Because we apprehend that such coercion and intimidation inhere in the political and ideological questions which are at the root of the refusal to admit to practice the petitioners in these cases, and because such questions have such wide ramifications for the constitutional organization and functioning of our society, we respectfully submit that political questioning or testing of lawyers cannot be permitted.

I

Before the Bench, the lawyer stands as the shield of the individual against the State's coercive and punitive powers; it is only by his courage, skill and effort that the constitutional prescriptions for due process of law are given full meaning.

It was said by Lord Erskine, perhaps the greatest advocate in Anglo-American legal history, in 1792, during his argument in defense of Thomas Paine and *The Rights of Man*:

"I will forever, at all hazards, assert the dignity, independence, and integrity of the English Bar, without which impartial justice, the most valuable part of the English Constitution, can have no existence."¹

Only rarely, perhaps, if ever, can a lawyer pretend to match the skill and eloquence with which Erskine conducted his defenses.² But every lawyer can aspire to the

¹ Quoted in Stryker, *For the Defense* 217. (1947).

² It is perhaps not unmeaningful that Erskine's greatest exploits of advocacy were performed and his reputation earned in ideological prosecutions of defendants for utterances of "seditious libel" against the Crown growing out of political agitation. See Stryker, *supra*, *passim*.

fearlessness with which Erskine defended his clients.³

Without the independence of personality and the indomitable courage which characterized Erskine, is an accused's right to counsel truly effective? Who will guard him against the impositions of an overzealous adversary or prosecutor? Who will assure him due process of law?

Our own courts have not ignored this necessity for fearlessness and independence of the advocate before the

³ Lord Brougham, himself not without repute as an advocate, commented on Erskine as follows:

" * * * I find that [both] Lord Erskine and M. Berryer possess the great faculty of conducting cases with perfect skill and matchless eloquence, and they had both, in perfection and equal measure, the quality of indomitable courage. Lord Erskine, however hard pressed, was no man to fear, either the court or the king or the king's judges, but he did his duty to his client in spite of all that power held up to intimidate or tempt him, and in spite of all opposition, even in those courts in which he practiced and of which he was the ornament and the pride. The same great qualities I have constantly observed in M. Berryer, that which is first of all the quality of an advocate—to reckon everything subordinate to the interests of his client—to have no purpose except to serve his cause effectively—to make no deviation or digression to please either jury, or judge, or the populace or the Crown, but to do his duty looking only to the success of his client. And they who have not the matchless eloquence of these great men may worthily perform the rest of that duty, and may do it to their own honor, and infinitely to the advantage of their clients. In the administration of justice, the great advantage we have over all other nations is, that in this country its purity depends in the first place upon the purity of the judge, but in the next place upon the skill, the prudence, the discretion and the courage of the advocate. I see no worse fate that can befall this Country than losing the purity of its administration of justice—losing its certainty, and those other qualities which are the admiration of the world. I can conceive nothing more fatal to it than an infringement of the independence of the Bar; or a want of courage on the part of an advocate." Quoted in Costigan, *The Full Remarks on Advocacy of Lord Brougham and Lord Chief Justice Cockburn at the Dinner of M. Berryer on November 8, 1864*, 19 Calif. L. Rev. 521 (1931).

Bench.⁴ Nor has its significance escaped our practicing lawyers, writers and bar spokesmen.⁵

If it is true that the lawyer's role is as an independent advocate, whose paramount interest is the fearless and dedicated presentation of his client's cause, then it must also be true that the practice of the law is no profession for the weak minded or the timid. It was said by Sir James Stephen in his *History of the Criminal Law*:

"* * * The whole legal profession is pre-eminently a manly one. It is a calling in which success is impossible to the weak or timid, and in which every one, judge or barrister, is expected to do his duty without fear or favor to the best of his ability and judgment."⁶

We do not intimate that courage alone is all that is required for a license to practice law. Obviously the requirements of sufficient learning and of morality, honesty and forthrightness are just and reasonable qualities to require of the lawyer.

⁴ See generally, *Tamner v. United States*, 350 U. S. 399; *Gallagher v. Municipal Court*, 31 Cal. 2d 784; *People v. Matson*, 51 Cal. 2d 777; *People v. Wheeler*, 413 C. A. 2d 881; *Chula v. Superior Court*, 109 C. A. 2d 24; *Bennett v. Superior Court*, 97 Cal. 2d 585; *Platnauer v. Superior Court*, 32 C. A. 463; *People v. Rongetti*, 344 Ill. 107; *Matter of Rotwein*, 291 N. Y. 116.

⁵ See *Report of the Association of the Bar of the City of New York*, December 12, 1950, 37 A. B. A. J. 125 (1951), reprinted in 1 Emerson and Haber, *Political and Civil Rights in the United States*, 483 (2nd Ed. 1958). Editorial, *The Independence of the Bar*, 13 *Lawyers Guild Review* 158 (1953); Randall, *Our Professional Responsibility: Lawyers Make Freedom a Living Thing*, 43 A. B. A. J. 315, 316 (1957); Cutler, *The Lawyers' Ten Commandments*, 44 A. B. A. J. 1165 (1958); Wittschen, *Letter to W. C. Jacobsen*, 11 Cal. St. B. J. 27, 30 to 32 (1936); Ball, *Freedom of the Bar*, 32 Cal. St. B. J. 109 (1957).

⁶ Quoted in Stryker, *op. cit. supra*, Note 2, 120.

But the significant fact about the *Konigsberg* and the *Anastaplo* cases is that neither of these men can be doubted on the score of learning, morality, honesty and forthrightness. Both have passed the tests of their respective State Bar Committees with respect to learning. The morality and integrity of *Konigsberg* was noted by this Court in its prior opinion in this case (353 U. S. 252) and if anything the record before this Court now has been augmented in that respect. No single shred of evidence casting doubt upon *Konigsberg*'s character was introduced at any hearing of the Bar Committee or the State Court, nor was any turned up by the Bar Committee's independent investigation of *Konigsberg*'s life and background.

Similarly, *Anastaplo* has presented a record of an unblemished life and there has been no suggestion in the record or in the opinions of the courts below that he is in any manner morally unfit for the fraternity of the law.

It is significant that the very characteristic most essential to the lawyer—that of fearless adherence to a legal principle—is the trait which has caused these men to be refused admission. Both men have held fast to the proposition that the First Amendment bars inquiry into one's political beliefs or associations by any arm of the Government, and in addition, *Anastaplo* has held fast to the thesis of the preamble to our Declaration of Independence. Indeed, their position was that their training as lawyers invested them with the duty to resist impositions upon what they deeply believe to be their constitutional rights. Except for such resistance, neither the California nor the Illinois bar examiners can claim any deficiency in either *Konigsberg* or *Anastaplo*.

Can it be that a Bar, whose duty it is to counsel clients as to their rights and liberties, whose duty it is to resist, on

⁷ And a principle which this Court has at least characterized as "not frivolous" (*Konigsberg v. State Bar*, 353 U. S. 252, 270).

behalf of clients, all such impositions, whose duty it is to give living meaning to the right to counsel, and the concepts of due process and elemental fairness, can afford to exclude such men? As Professor Chafee has said, "excessive scrupulousness is not so common among lawyers that we can afford to drive it out of the Bar."

II

In private and public life, as well as before the Bench, the independence of the Bar must be preserved because historically society has cast upon the lawyer the role of the knowledgeable exponent of the traditions, rights and liberties derived from the past as well as the articulate spokesman for the ideas, viewpoints and movements of the present and future.

It is commonplace among the Bar that the lawyer exercising his rôle of advocate, may play an integral and essential part in the law-making process, which has effects reaching far beyond the factual confines of the case in which he acts. It is just as well known that the lawyer by virtue of his special training and position is peculiarly fitted to play the role of public spokesman for the concepts and ideas which preserve our democratic liberties and which fashion our society's direction.

* Chafee, *The Blessings of Liberty*, 168-169 (1956).

"These principles have previously been stated by the Guild in *Editorial*, 13 *Lawyers Guild Review* 158.

"Litigation seemingly private in character may affect vast interests and produce an impact which may be felt for generations after the litigants have been forgotten.

"The lawyer bears an important responsibility for the creative development of the law, for flexibly molding its control to meet the basic needs of his times. * * * Lawyers discharge their responsibilities as guardians of liberty both through their defense of unpopular defendants as well as through their activities as public spokesmen, as analysts of legislation, as political representatives."

New Jersey's Chief Justice Vanderbilt has said:

"In a free society, every lawyer has a fourth responsibility, that of acting as an intelligent, unselfish leader of public opinion—I accent the qualities 'intelligent' and 'unselfish'—within his own particular sphere of influence. In our complicated age sound opinion is more indispensable than it ever was; without it even courageous leadership may fail."

"No individual class in our society is better able to render real service in the molding of public opinion."¹⁰

Throughout the history of the Anglo-American legal system, advocates in private and public life have performed key functions in the development of its jurisprudence, its legislation, its politics, philosophy and mores.¹¹

De Tocqueville's comment on the American legal profession in the nascent days of the Republic is just as apt today as it was in 1830:

"The influence that it exerts in America is the most powerful existing security against the excesses of democracy. Without this admixture of lawyer-like sobriety, with democratic principles, I question whether democratic institutions could long be maintained, and I cannot believe that a republic could exist at the present time, if the influence of lawyers in public business does not increase in proportion to the power of the people."¹²

¹⁰ Vanderbilt, *The Five Functions of the Lawyer: Service to Clients and the Public*, 40 A. B. A. J. 31-32 (1954).

¹¹ Pound, *Jurisprudence*, 673-706 (1959); See Wright, *Milestones and Concepts of the Lawyer-Citizen*, 41 A. B. A. J. 797 (1955); Cohen, *Some Observations on Advocacy: Judicial and Legislative*, 41 A. B. A. J. (1955); Randall, *Our Professional Responsibility: Lawyers Make Freedom a Living Thing*, 43 A. B. A. J. 315 (1957); Tyrell, *The Lawyer Lights the Way*, 13 Cal. St. E. J. No. 12, page 40 (December, 1938); Drinker, *Remarks on "The Ethics of Advocacy"*, 5 Stan. L. Rev. 349 (1952).

¹² De Tocqueville, *Democracy in America*, quoted in Randall, *op. cit. supra*, note 13, at 318.

If the garments of leadership and influence, historically tailored to the legal profession, are to be worn by the bar of the present and future, can they be made to fit a body made anemic in principal and conviction by refusal to ingest the nourishment of debate and dissent? We submit that the mantle cannot be altered. It will grace only a profession whose frame is muscled with principled courage and nourished with the widest variety of intellectual foods. The organism of such leadership and influence must feed upon debate, dissent, non-conformism and original thought or it will wither and atrophy.

It is vital for an effective application of First Amendment principles throughout our country and among all of its people, that the influence and leadership of the bar be manifested through the expression of all points of view, non-conformists as well as those currently having the sanction of governmental policy.

III

To permit inquiry into the political, social or philosophic views of lawyers would discourage the freedom and independence of thought necessary to produce great exemplary advocates, would deprive the profession of principled men, like the petitioners, who refuse to submit to such inquiry; and would stifle the leadership and courage necessary to fulfill the Bar's traditional functions.

It has been noted above that Erskine's reputation as a fearless advocate was earned principally in ideological prosecutions. The main thrust of his arguments and of the principles which guided them was the freedom of the British press and the right of the British people to petition for redress of their grievances, notably reorganization of the House of Commons.¹³

¹³ Stryker, *op. cit. supra*, note 1, *passim*.

Among our own American paragons of advocacy, too, reputations were earned through great exploits in trials basically of ideology. Andrew Hamilton's great moment occurred in his defense of the printer Peter Zenger and his exposition of libertarian rights of speech and press. Darrow had his Scopes trial and even many of his cases, which in form were defenses of acts of violence charged, were outgrowths of the battle of ideas which marked the early Twentieth Century.¹⁴

Can it be said such exemplars of the art of advocacy could grow from a bar subject to political pressures? Where the pressures are directed at the bar from without there does not seem to be much debate but that they would crush the spirit necessary to produce such advocates.¹⁵

Yet how do such restrictions or pressures imposed from within the organized bar itself differ in effect from those imposed from without? We submit that there is and can be no difference in effect. If, under the shibboleth that the applicant owes the organized bar complete candor as to his fitness, the bar is permitted to inquire into an applicant's thoughts, beliefs and political associations (with the threat implied that if those thoughts, beliefs or associations do not win the approval of a committee of the

¹⁴ Stone, *Clarence Darrow for the Defense*, *passim* (1941).

¹⁵ See Randall, *op. cit. supra*, note 6, at 317; Wittschen, *op. cit. supra*, note 5, at 30-32; and Mr. Ransom, then President of the American Bar Association, in 1935 wrote (10 Cal. St. B. J. 315):

"A legal profession subject to political control or coercion would be as repugnant to the spirit of our institutions as a judiciary supine and politically controlled; and such control or coercion of the profession, if attempted, would in fact be an invasion of the province of the courts as to their officers.

"An independent and outspoken bar, which in its championship of genuine public interest is neither subject to political intimidation nor subservient to the contentions of clients, is the staunchest safeguard of a free people."

organized bar, an applicant otherwise supremely qualified can be denied admission) what other effect can be perceived than that only those whose opinions are orthodox will be admitted or even will apply? This cannot be the soil from which spring the defenders of the unpopular and the oppressed.

Professor Chafee has observed:

"Here is something else that Hamilton [Alexander Hamilton, who was relied upon by this Court for its opinion, in *Cummings v. State Missouri*, 4 Wall. (71 U. S.) 277, 18 L. ed. 356, said about test oaths that is very pertinent, that they excite scruples in the honest and conscientious. Such men will occasionally refuse to take the oath. They believe (not unreasonably) that it violates at least four provisions of the very Constitution which they swore to support—the *ex post facto* clause, the bill of attainder clause, the First Amendment and the privilege against self-incrimination in the Fifth Amendment. They consider it an unwarranted invasion of their liberties for anybody to make them declare their lawful, private opinions and activities about politics and economics. So they leave the profession rather than take the oath. Such men may be called over-conscientious, but excessive scrupulousness is not so common among lawyers that we can afford to drive it out of the Bar.

"Some experienced lawyers have told me that my apprehension on this score is nonsensical. They insist that no honest lawyer will decline to sign the required affidavit, and that anybody who does have difficulties about signing is sure to be the kind of man whom the bar is better off without. On the contrary, I believe that there are many conscientious

lawyers who will have just the worries I have described."¹⁶

It is really not remarkable that principled men like the petitioners herein have refused to submit to such pressures. It is remarkable that a bar, historically dedicated to the principle of defense and preservation of constitutional liberties, even for the most repugnant,¹⁷ and whose members individually and collectively¹⁸ are called upon to give this dedication life and actuality, should impose such pressures upon its own aspirants.

¹⁶ Chafee, *op. cit. supra*, note 8 at 167-168.

Professor Chafee went on:

"They will be like Samuel Taylor Glover, when confronted with the Missouri test oath for lawyers at the end of the Civil War.

"Glover was an active St. Louis lawyer who had identified himself with the emancipation of slaves from his youth up, despite the overwhelming preponderance of slavery sentiment in the various states where he had lived. He was a prominent Republican in the campaign of 1860. While it was touch-and-go whether Missouri would secede, Glover was a leader in keeping his state in the Union. Probably no lawyer in Missouri could have subscribed with greater honor to the terms of this test oath. Nevertheless, Glover refused to take it on the ground of principle. He was indicted and convicted after trial for continuing to practice without taking the oath. Luckily for him, the *Cummings* case [*Cummings v. State of Missouri*, 4 Wall. (71 U. S.) 277, 18 L. ed. 356], was decided in time to get his conviction reversed. Thereafter he became the recognized head of the St. Louis bar, was retained in 30 cases in the United States Supreme Court and 410 cases in the highest court in Missouri.

"The Exculpatory Oath after the Civil War almost deprived the bar of Glover, the best constitutional lawyer of his time in the West, and of Garland, a future Attorney General."

¹⁷ See Wittschen, *op. cit. supra*, note 5, at 30-32.

¹⁸ See Ball, *op. cit. supra*, note 5, at 111.

Within the last decade the courage and independence of the bar has undergone a series of severe tests. The response of the bar to these tests has not been uniform. Sometimes because of the unpopularity of the defendants or the causes which lawyers have been called upon to espouse the defendants have had extreme difficulty in securing counsel.¹⁹ Yet lawyers and sometimes the organized bar itself have been seen to rise with dedication and firmness to the challenge before which, unfortunately, a large part of the bar has retreated. Mr. Ball, writing while President of the California State Bar, has noted that both that organization and the American Bar Association have within this same past decade affirmed the duty of the bar to provide aid to

¹⁹ Commager, *Freedom, Loyalty, Dissent*, page 20, footnote 4 (1954):

"Note that the canon of legal ethics provides (Canon XV) the lawyer owes 'entire devotion to the interests of the client * * * no fear of judicial disfavor or public unpopularity should restrain him from full discharge of his duty.' A report of a special committee of the American Bar Association of July, 1953, states that 'American lawyers generally recognize that it is the duty of the bar to see that all defendants, however unpopular, have the benefit of counsel for their defense.' Yet persons charged with subversive activities are finding it almost impossible to obtain counsel. In the Baltimore case of *U. S. v. Frankfeld*, defendants appealed in vain to more than 30 lawyers to take their case. In the case of *Commonwealth of Pennsylvania v. Nelson*, the defendant was forced to represent himself in the trial for sedition, after having appealed in vain to 700 lawyers in Pittsburgh and other eastern cities. In the case of *U. S. v. Flynn, et al.*, defendants submitted to the U. S. Circuit Court of Appeals an affidavit stating that 'they have written to more than 28 law firms throughout the country requesting an interview to discuss the retainer of said firms on the appeal therein. Of this number 12 did not reply at all to appellants' request; all 16 who did reply refused to grant the requested interview on the grounds that they either could not or would not accept a retainer herein.'"

unpopular defendants. He notes further that in situations where lawyers individually have been declining to accept representation of such defendants because of the fear of economic consequences and personal stigma it has devolved upon the organized bar by one means or another to provide such representation. Speaking for the California State Bar Mr. Ball concludes:

"The State Bar of California will be the first to discipline its members for contemptuous conduct. On the other hand, we will be prompt to defend the complete independence of the lawyer. He should not and cannot be subject to intimidation and abuse at a time when he represents a member of an unpopular political party, otherwise the very person who needs counsel will be deprived of the right of counsel. Furthermore, the lawyer should not be identified with the cause of his client. The right to counsel, independent loyal counsel, is one of the noble traditions of constitutional government."²⁰

The decisions in the causes before the Court will not eliminate either the tendency of some lawyers to run before threats and intimidation nor the tendency of others to stand fast to the duties to their clients and the public. However, we submit that the decisions here must greatly strengthen one tendency and weaken the other. The National Lawyers Guild profoundly believes that the Court should speak to strengthen that tendency of the bar and of lawyers as individuals to uphold without fear the full meas-

²⁰ Ball, *Freedom of the Bar*, 32 Cal. St. B. J. 109, 125.

ure of the bar's responsibility to clients, to the public and
to the full meaning of the constitutional right to counsel.

Respectfully submitted,

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IN THE
Supreme Court of the United States

October Term, 1960

No. 28

FRANK B. BLECHER

Petitioner

AT THE BAR OF CALIFORNIA AND THE COMMITTEE OF
THE EXAMINERS OF THE STATE OF CALIFORNIA

RESPONDENTS' BRIEF

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IN THE
Supreme Court of the United States

October Term, 1960

No. 28

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RAPHAEL KONIGSBERG,

Petitioner,

vs.

STATE BAR OF CALIFORNIA AND THE COMMITTEE OF
BAR EXAMINERS OF THE STATE OF CALIFORNIA.

RESPONDENTS' BRIEF.

I.

Questions Presented.

1. Is the denial by the California Supreme Court of the petitioner's application for admission to the Bar on the ground that he refused to disclose his relationship with the Communist Party in the present and recent past consistent with the decision of this Court in *Kenigsberg v. State Bar*, 353 U. S. 252?
2. Does the denial by the California Supreme Court of the petitioner's application for admission to the Bar on the basis of California law in existence before the petitioner entered law school raise any constitutional issue independent of those presented by the substance of the law applied?
3. Was the petitioner given adequate warning by the Committee investigating his fitness to practice law that his continued refusal to disclose his relationship with

the Communist Party in the present and the recent past would result in the denial of his application for admission to the bar?

4. Does the denial by the California Supreme Court of the petitioner's application for admission to the Bar on the ground that he refused to disclose his relationship with the Communist Party in the present and the recent past deny any of the petitioner's constitutional rights?

II.

Constitutional and Statutory Provisions Considered.

The Fourteenth Amendment provides:

"* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The basic act governing admission to the bar in the State of California is to be found in the Business and Professions Code of the State of California. The principal sections involved are Sections 6060 and 6064.1. These sections read as follows:

"§6060. Qualifications for Applicants:

"To be certified to the Supreme Court for admission and a license to practice law, a person who does not comply with section 6062 shall:

(a) Be a citizen of the United States.

(b) Be of the age of at least 21 years.

(c) Be of good moral character."

- (d) Have been a bona fide resident of this State for at least three months immediately prior to the date of his final bar examination.

"§004.1. One Advocating the Overthrow of Government Not to be Admitted:

"No person who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law."

The following sections of the Business and Professions Code are those which empower and command the Committee to investigate the fitness of applicants for admission to practice.

"§0046. Examining Committee: Powers. The board may establish an examining committee having the power:

- (a) To examine all applicants for admission to practice law.
- (b) To administer the requirements for admission to practice.
- (c) To certify to the Supreme Court for admission those applicants who fulfill the requirements provided in this chapter."

"§0047. Same: Rules and Regulations. Subject to the approval of the board, the examining committee may adopt such reasonable rules and regulations as may be necessary or advisable for the purpose of making effective the qualifications prescribed in Article 4."

"§0048. Committees to Take and Report Evidence: Reports: Records. The board may also appoint one or more committees to take evidence on behalf of the board and to forward the same to the board with a recommendation for action by the board.

"A record of all hearings shall be made and preserved by the board or committee."

"§0049. Power to Take and Require Proofs. In the conduct of investigations and upon the trial and hearing of all matters, the board and any committee having jurisdiction, including the examining committee, may:

- (a) Take and hear evidence pertaining to the proceeding.
- (b) Administer oaths and affirmations.
- (c) Compel by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding."

III.

Statement of the Case.

In 1953 the petitioner, Raphael Konigsberg, applied for admission to the Bar of the State of California. Thereafter hearings were conducted by the Southern Subcommittee of the Committee of Bar Examiners and by the full Committee to determine whether petitioner could be certified to the California Supreme Court as qualified for admission.

At these hearings, petitioner presented evidence of his qualifications. He was confronted with testimony that he was once a member of the Communist Party and with other evidence which raised doubts in the

mind of the Subcommittee and the Committee whether they could properly certify him for admission. He was asked, but consistently refused to answer, whether he was, or had been, a member of the Communist Party of the United States or any organizations associated with or dominated by that Party and refused to answer other questions regarding related activities. [1956 Rec. pp. 409, 117 *et seq.*, 125-126.]¹

The Committee determined that the petitioner had not sustained the burden of proof that he was possessed of a good moral character and that he did not advocate the possible overthrow of the government. [1956 Rec. p. 344.]

The Supreme Court of California refused to review this determination, with three Judges voting for a hearing.

On certiorari, this Court found that there was insufficient evidence in the record rationally to support a determination that petitioner lacked good moral character or advocated the violent overthrow of the government. The right of the State to exclude Mr. Konigsberg from practice because he refused to divulge information regarding his background to those charged with investigating his qualifications, after due warning of the possible consequences of his refusal, was expressly left open by the decision of this Court. (*Konigsberg v. State Bar*, 353 U. S. 252.)

After remand, the Supreme Court of California referred the matter to the Bar Examiners for further

¹In order to avoid confusion, the printed record before this Court in 1956 and the present record will be designated in conformance with the style employed in the petitioner's brief.

investigation and evaluation. [1960 Rec. p. 2.] Pursuant to the order of that Court, ~~the~~ Committee conducted a further hearing on September 21, 1957. [1960 Rec. p. 3.]

At this hearing, the petitioner was advised that it was the statutory duty of the Committee to conduct a thorough inquiry into his eligibility for admission to the Bar and that it was his duty to be completely candid and frank with the Committee. He was exhaustively warned by Chairman Whitmore, both before and after his examination, of the detrimental consequences to a favorable consideration of his application which would ensue from his refusal to answer questions relating to his membership in the Communist Party.

"I have generally outlined to Mr. Mosk the scope of the proposed hearing today. I should like to point out to Mr. Konigsberg, as well as to Mr. Mosk, that the functions of the Committee of Bar Examiners are really two-fold: First to investigate in connection with the requirements for admission to practice set forth in the Business and Professions Code; and second to make determinations. *As a result of our two-fold purpose, particularly our function of investigation, we believe it will be necessary for you, Mr. Konigsberg, to answer our material questions or our investigation will be obstructed. We would not then as a result be able to certify you for admission.* If you have questions we shall certainly be happy to have your counsel or you address them to us. We should certainly make every effort to limit our questions to those which are material ones.

"Mr. Konigsberg, as indicated at the beginning of this proceeding, the Committee is really charged with two functions, one to investigate, and one to determine. Your counsel has asked the Committee, asked me, for an indication as to the scope and purpose of this hearing. I indicated to him what the scope and purpose is, and as a result you are aware of it. We are engaged in the function of investigating matters which we are charged with the responsibility of determining under the law of the State of California. We have every intention and desire of carrying out that investigative duty consistent with the constitutional protections and freedoms that the United States and the California constitutions provide. We still have an obligation to investigate. I believe that we are charged with this responsibility as it might apply to your application for admission. That investigation can be carried out in a number of ways. In connection with determining whether or not you meet the minimum standards to practice law as far as the knowledge of the subject of law is concerned, we have asked you questions in an examination, and you have given us answers. In connection with other requirements for admission to practice, as set forth in the Business and Professions Code of California, we have asked you to fill out an application, which you have done. Also as part of our investigation and your satisfying each and all of these requirements, to practice law we have called you before the Committee. We have asked questions of you. We are merely now engaging in that investigation which we have engaged in by having hearings, by having you fill

out applications, and by asking you to take an examination before. Now, this is part of that same function. * * *

* * *

"Mr. Konigsberg, I think you will recall that I initially advised you a failure to answer our material questions would obstruct our investigation and result in our failure to certify you. With this in mind do you wish to answer any of the questions which you heretofore up to now have refused to answer?" (Emphasis added.) [1960 Rec. pp. 4, 22, 26.]

The Committee also explained to the petitioner the pertinency of questions regarding his membership in the Communist Party to its inquiry into his qualifications for admission to the Bar.

"If you answered the question, for example, that you had been a member of the Communist Party during some period since 1951 or that you were presently a member of the Communist Party, the Committee would then be in a position to ask you what acts you engaged in to carry out the functions and purposes of that party, what the aims and purposes of the party were, to your knowledge, and questions of that type. You see by failing to answer the initial question there certainly is no basis and no opportunity for us to investigate with respect to the other matters to which the initial question might very well be considered preliminary.

* * *

"Mr. Mosk, you realize that if Mr. Konigsberg had answered the question that he refused to an-

swer, an entirely new area of investigation might be opened up, and this Committee might be able to ascertain from Mr. Konigsberg that perhaps he is now and for many years past has been an active member of the Communist Party and from finding out who his associates were in that enterprise we might discover that he does advocate the overthrow of this government by force and violence. I am not saying that he would do that, but it is a possibility, and we don't have to take any witness testimony as precluding us from trying to discover if he is telling the truth. * * *

[1960 Rec. pp. 29, 31.]

Nevertheless, petitioner refused to divulge whether he has been a member of the Communist Party at any time since 1951, *or whether he is presently a member of such party.* [1960 Rec. p. 24.]² In each instance, the petitioner predicated his refusal to answer upon his rights under the First Amendment and Article I, Section 1, of the California Constitution. [1960 Rec. p. 24.]

The full sweep of Mr. Konigsberg's ideas regarding the permissible limits of an inquiry by those charged with examining the qualifications of applicants for ad-

²The petitioner's unsupported statement quoted on page 15 of his brief, that he "never advocated the overthrow of the government or belonged to an organization that advocated the overthrow of the government" certainly does not foreclose further inquiry by the Committee into this vital area.

mission to the Bar is revealed by his comments at the hearing.

Chairman Whitmore: How can we make a determination with respect to the nature of your activities with the Communist Party if you were, assuming you were, a member if we have no basis for questioning you concerning them? You won't answer our question as to whether or not you were ever a member. That question in that respect would be a preliminary question, would it not?

A. You have asked me if I advocate the overthrow of the government, if I committed any illegal acts. I answered gladly. I never have, I don't now, and I never will. I am incapable of doing it.

Mr. O'Donnell: Suppose we don't believe you, don't you think we are entitled to ask you as to your association with the Communist Party and your membership with the Communist Party as part of our examination?

A. *You are entitled to ask me only with respect to phases of illegal activity. You cannot ask me or any citizen about his activities that are legal, that are protected under the First Amendment, under the part of normal civic activity. * * ** (Emphasis added.)

[1960 Rec. p. 28.]

In other words, the substance of Mr. Konigsberg's position is: You may ask me if I have committed specific criminal or illegal acts. You may not make any inquiry regarding activity which is not *per se* illegal even if this inquiry might lead directly to evidence of activities which would clearly disqualify me from ad-

mission to the California Bar. If I do not admit to criminal activity, or if you cannot prove such activity on my part, I am entitled to admission to the Bar although I have refused to reveal to you important areas of my background.

The Committee made the following findings in its report to the Supreme Court of California:

"(1) That the questions put to the applicant by the Committee concerning past or present membership or affiliation with the Communist Party are material to a proper and complete investigation of his qualifications for admission to practice law in the State of California.

(2) That the refusal of applicant to answer said questions has obstructed a proper and complete investigation of applicant's qualifications for admission to practice law in the State of California.

(3) That the refusal of applicant to answer said questions has obstructed a necessary and proper function of the Committee under Section 6046 and related sections of the Business & Professions Code of the State of California and under the Rules Regulating Admission to Practice Law in California adopted pursuant to Section 6047 and related sections of said Code.

(4) That in view of the foregoing, the Committee is unable to certify that applicant possesses the requisite qualifications or has fulfilled the requirements for admission to practice law in the State of California."³

³The report of the Committee of Bar Examiners to the Supreme Court of California is not included in the printed transcript before this Court, but was summarized in the opinion below [1960 Rec. p. 55] and is set forth as Exhibit A to this brief.

The Supreme Court of California reviewed the entire record, adopted the findings of the Committee and refused to admit the petitioner to the practice of law. [1960 Rec. p. 52.]

IV

Summary of Argument.

A. In its prior opinion, this Court stressed that the petitioner had not been denied admission to practice because of his refusal to answer relevant questions but because the evidence created substantial doubts regarding his moral character and loyalty. The evidence raising these doubts was found to be insufficient to support a finding adverse to his qualifications, but this Court expressly stated that it did not "mean to approve or disapprove Konigsberg's refusal to answer the particular questions asked of him" and would consider the permissibility of a refusal to admit for failure to answer relevant questions when that situation arose.⁴ The case was then remanded for "further proceedings not inconsistent with this opinion." (*Konigsberg v. State Bar*, 353 U. S. 252, 261, 262, 274.)

It is respectfully submitted that the proceedings now to be reviewed by this Court are entirely consistent with its former opinion. The petitioner has been refused admission on the precise ground which this Court held not to have previously been in issue.

B. The refusal of the Supreme Court of California to admit the petitioner to the practice of law because

⁴Justices Harlan and Clark in their dissenting opinion concluded and respondents in their Petition for Rehearing stressed that refusal to answer relevant questions was, and has always been, grounds for denying admission to the California Bar.

of his obstruction of the examination into his qualifications was not a novel proposition or one that could not have been foreseen by the petitioner.

In the first place, there can be no question of the fact that it is the law of California that an applicant who refuses to answer relevant questions pertaining to his qualifications will not be admitted. The Supreme Court of California so held in the opinion below; and that Court is the body with the ultimate authority in California to set and determine the qualifications for admission to practice before it. The only federal question posed is whether this rule is so arbitrary and capricious as to violate provisions of the constitution. (*Theard v. United States*, 354 U. S. 278, 281; *Re Summers*, 325 U. S. 561, 570-571.) It is quite immaterial whether this is a "new rule" or an old one in view of the fact that (1) the petitioner was exhaustively warned by the Committee of the probable consequences of his refusal to answer and (2) the power to remove this impediment to his qualifications always was and is now in the petitioner's hands.

However, in point of fact, the opinion of the Court below does not purport to formulate a new rule, but merely construes and applies the existing law of California. Sections of the Business and Professions Code which have been on the books at least since 1939 require the Committee of Bar Examiners to examine all applicants for admission to the practice of law, administer the requirements for admission, and certify qualified applicants to the Supreme Court of California for admission. Section 6064.1 of that Code, added in 1951, enjoins the Committee from certifying any applicant who advocates the overthrow of the government of the

state or nation by forcible, violent or unconstitutional means. The Court below construed these statutes to require the Committee to make the inquiries it did make; found the questions relating to petitioner's membership in the Communist Party in the present and recent past to be relevant to this inquiry; and construed these statutes to proscribe the admission of an applicant blocking this legislatively compelled inquiry. [1960 Rec. pp. 53, 56; 57-58.]

When at the 1957 hearing the Committee warned the petitioner of this legislative mandate, he either disagreed or was indifferent to the California law in this regard. It is respectfully submitted that the fact that petitioner bore the usual consequences of one who ignores or misgauges the effect of the existing law upon his actions raises no independent constitutional question. This is particularly true in view of the fact that the petitioner is capable of correcting the impediment to his admission at any time if his answers would fail to disclose any reason for his disqualification.

Finally, many decisions of the California courts prior to that involving this petitioner are authority for the result reached here. Not only were other applicants prior to petitioner denied admission because of their refusal to answer pertinent questions posed by the Committee,⁵ but in many cases the Supreme Court of California had stressed the obligation of an applicant to be candid and frank in disclosing details of his background bearing upon his qualifications. The reason

⁵These petitions for admission were denied without a written opinion by the Supreme Court of California but are described and identified in the quotation from the article by Goscoe O. Farley set forth on page 27 of this brief.

assigned by the Court for this requirement was that otherwise the Committee could not adequately investigate the fitness of the applicant for admission. This reason applies precisely to the conduct of the petitioner. Although the applicants involved in the cases mentioned were devious while petitioner has been boldly defiant, each accomplished the same result. Each foreclosed the inquiry of the Committee into matters which the applicant desired to remain secret but which were essential to the investigation of his qualifications for admission.

C. It is surely an unsound constitutional argument that a state is compelled to admit an applicant to practice law although he refuses to disclose relevant areas of his background; that the decision of the state to exclude him for so long as this situation obtains is so arbitrary and capricious as to justify federal intervention. Examples of applicants refusing to discuss their association with known criminal elements or syndicates should give pause to one so contending. If there is no dispute with the reasonableness of the general requirements, the only constitutional issues presented here are (1) whether the particular questions asked and unanswered were relevant to the inquiry into the petitioner's qualifications and (2) whether the petitioner's refusal to answer these questions, though relevant, is entitled to some special constitutional protections not present in the case of refusal to answer other pertinent questions.

*As stated above, Section 6064.1 of the California Business and Professions Code specifically prohibits the respondents from certifying for admission to the California Bar an applicant advocating the overthrow of the Government by forcible, violent or unconstitutional

means. In view of the overwhelming legislative and judicial findings that the Communist Party is an agency dedicated to such ends, it cannot reasonably be contended that the inquiry was not relevant to the forbidden advocacy or was an idle foray into his "political beliefs."

Recent cases decided by this Court have foreclosed the contention that California is barred from attaching the consequences which it did to the petitioner's refusal to answer the questions posed. For example, a witness before a legislative committee who refuses to answer similar questions may be punished for his refusal to answer. (*Barenblatt v. United States*, 360 U. S. 109; *Uphaus v. Wyman*, 360 U. S. 72.) More directly to the point, school teachers, subway conductors and social workers may be dismissed for refusing to answer the same or similar questions directed to them by their superiors. (*Beilan v. Board of Education*, 357 U. S. 399; *Lerner v. Casey*, 357 U. S. 468; *Nelson and Globe v. County of Los Angeles*, 362 U. S. 1, 4 L. Ed. 2d 494.)

Each of these decisions is pertinent and determinative of this appeal unless it be considered that the state has a less vital concern in the integrity of members of its bar than in the integrity of its school teachers, subway conductors and social workers. We respectfully submit that this cannot possibly be the case. An attorney is an officer of the court, and, like the court itself, is an instrument or agency to advance the ends of justice. (*Theard v. United States*, 354 U. S. 278, 281; *In re Rouss*, 221 N. Y. 81, 116 N. E. 782; *People v. Mattson* (1959), 51 Cal. 2d 777, 793, 336 P. 2d 937, 949.) "The right to practice law not only presupposes in its possessor integrity, legal standing and attainment, but

also the exercise of a special privilege, highly personal and partaking of the nature of a public trust." (*Townsend v. The State Bar* (1930), 210 Cal. 362, 364, 291 Pac. 837, 838.) He is charged by the legislature with obligations requiring the highest degree of moral fiber, fairness and competence. (Calif. Bus. and Prof. Code §6068.)

In view of the unique and vital role played by the lawyer in the administration of justice, the interest of the people of California in insuring the moral and professional fitness of members of the bar seems obvious. It is respectfully submitted that the requirement of full disclosure by applicants of areas of their backgrounds relevant to their qualifications to practice law as a condition to admission to practice is an entirely reasonable method of achieving this goal.

Finally, this Court pointed out in its former opinion that it would be necessary to warn the petitioner of the consequences of his refusal to answer so that he would not be surprised at the consequences of his course of action. (*Konigsberg v. State Bar*, 353 U. S. 252, 261, 262.) At the hearing in 1957 which is the subject of the present review, the petitioner was exhaustively warned by the Committee of the probable consequences of his refusal to answer inquiries relating to his membership in the Communist party in the present and recent past. [1960 Rec. pp. 4-5, 22-23.]

• V.

Argument.

- A. The Denial of Mr. Konigsberg's Application for Admission to the California Bar by the California Supreme Court Is Completely Consistent With the Decision of the United States Supreme Court in *Konigsberg v. State Bar*, 353 U. S. 252.

A single issue on the merits was previously decided:

"We now pass to the issue which we believe is presented in this case: Does the evidence in the record support any reasonable doubts about Konigsberg's good character or his loyalty to the Governments of State and Nation?"

Konigsberg v. State Bar, 353 U. S. 252, 262.

The question whether Mr. Konigsberg could be denied admission to the State Bar of California solely by reason of his refusal to answer questions which were relevant and material to a determination of his eligibility for admission to practice was determined not to be before this Court and was not passed on by it:⁶

"He was not denied admission to the California Bar simply because he refused to answer questions.

"In Konigsberg's petition for review to the State Supreme Court there is no suggestion that

⁶This Court has reaffirmed in its subsequent decisions of *Belan v. Board of Education*, 357 U. S. 399, 409, and *Lerner v. Casey*, 357 U. S. 468, 478, that it did not intend to and did not pass on these questions. Also, it should again be pointed out that both the dissenting Justices Harlan and Clark and the respondents in their Petition for Rehearing unsuccessfully opposed the finding of the majority that this ground of disqualification was separate and not in issue.

the Committee had excluded him merely for failing to respond to its inquiries. Nor did the Committee in its answer indicate that this was the basis for its action.

* * *

"If it were possible for us to say that the Board had barred Konigsberg solely because of his refusal to respond to its inquiries into his political associations and his opinions about matters of public interest, then we would be compelled to decide far-reaching and complex questions relating to freedom of speech, press and assembly. There is no justification for our straining to reach these difficult problems when the Board itself has not seen fit, at any time, to base its exclusion of Konigsberg on his failure to answer. If and when a State makes failure to answer a question an independent ground for exclusion from the Bar, then this Court, as the cases arise, will have to determine whether the exclusion is constitutionally permissible. *We do not mean to intimate any view on that problem here nor do we mean to approve or disapprove Konigsberg's refusal to answer the particular questions asked him.*" (Emphasis added.)

Konigsberg v. State Bar, 353 U. S. 252, 261, 262.

This Court then held that the evidence in the record did not justify a determination that Mr. Konigsberg was not a man of good moral character or that he advocated the violent overthrow of the government. The judgment of the California Supreme Court was thereupon reversed and the case "remanded for further proceedings not inconsistent with this opinion." (*Konigsberg v. State Bar*, 353 U. S. 252, 274.)

The language used indicated, and we submit that it was the intention of this Court, that the case should be returned to the jurisdiction of the State of California for such further proceedings as were necessary and proper under the State law to determine whether Mr. Konigsberg should be admitted to the California Bar.

The Supreme Court of California ordered the matter referred to the Committee of Bar Examiners for further proceedings in the light of the opinion of this Court. Pursuant to this order, the Committee conducted a hearing and issued its Report to the Supreme Court of California. Said Report is attached as Exhibit A. As set forth in more detail in its Report, the Committee determined, without dissent, that Mr. Konigsberg's refusal to answer material questions had obstructed a proper and complete investigation of his qualifications for admission to practice law in the State of California and that it was therefore unable to certify him for admission to practice.

The California Supreme Court determined that petitioner could and should be denied admission to the California Bar on this ground. Justice Traynor, one of the two dissenting judges, agreed that Mr. Konigsberg could properly be denied admission on this ground and differed only on the question whether such action should be taken:

"The United States Supreme Court reversed the judgment of this court and remanded the case 'for further proceedings not inconsistent with this opinion.' (353 U. S. at 274.) In view of the questions expressly left undecided and the court's remand, it is my opinion that this court is not foreclosed by the United States Supreme

Court's decision in this case from adopting and applying to Konigsberg a rule making failure to answer relevant questions with respect to his qualifications an independent ground for exclusion.

[1960 Rec. p. 59.]

We respectfully submit that:

(1) It was not the intention of this Court to foreclose further proceedings, but rather to remand for such further proceedings and decision as were appropriate under the law and procedures of the State of California; and

(2) The action taken by the Committee of Bar Examiners and the State Supreme Court are entirely consistent with the order of this Court.

B. It Is Now and Has for Decades Been the Law in California That an Applicant for Admission to the Bar Must Be Candid and Frank in Disclosing His Background and Qualifications for Admission to the Bar and Will Not Be Admitted Until Such Free and Candid Disclosure Has Been Made.

Petitioner and *amici curiae* have persistently advanced the argument that The State Bar and Supreme Court of California have promulgated a "new rule" for the sole purpose of preventing a deserving individual from practicing law. Wholly aside from the fact that this argument presupposes unlikely and unworthy conduct by those demonstrably dedicated to the maintenance of high professional standards in the legal profession, it is erroneous as a proposition of law.

Stated affirmatively, the argument is: There is no formal rule enacted by the legislature or contained in the Rules Regulating Admission to Practice Law read-

ing "An applicant who refuses to answer relevant questions pertaining to his fitness to practice law may be denied admission until he makes full disclosure to the Committee"; therefore, an applicant may refuse to answer relevant questions at his selection and must be admitted unless the Committee by independent investigation can prove that his answers would disclose his disqualification. In addition to being unthinkable from a practical standpoint, and directly contrary to the unquestioned requirement in California that an applicant bear the burden of proving his fitness to practice law, this proposition is entirely refuted by the facts that (1) the Supreme Court of California is the ultimate body for determining the qualifications of applicants for admission to practice before ; (2) that Court has determined that an applicant who refuses to answer relevant questions posed to him by the Committee will not be admitted; (3) this decision was predicated upon statutes which have been in existence prior to 1939, before this petitioner entered law school; (4) the Supreme Court of California has previously refused to admit other applicants upon the exact ground present in this case; and (5) the requirement of candor and frankness with the Court and the Committee on the part of applicants for admission is an established proposition of long standing in California.

⁷Rule X, Section 101 of the Rules Regulating Admission to Practice Law in California, set forth on page 4 of petitioner's brief, provides in part: "The applicant shall have the burden of proving that he is possessed of good moral character, of removing any and all reasonable suspicions of moral unfitness, and that he is entitled to the high regard and confidence of the public." See also *Spears v. The State Bar* (1930), 211 Cal. 183, 188, 294 Pac. 697, 698-699; *In re Wells* (1917), 174 Cal. 467, 474-475, 163 Pac. 657, 660.

Beyond this, there is no question of "surprise" on the part of the petitioner to the application of such a requirement. As is established in other portions of this brief, the petitioner was exhaustively advised throughout the proceedings of the probable consequences of his refusal to answer questions.

(1) *The law of California has been conclusively declared by the California Supreme Court, which has the ultimate authority to set and determine the qualifications of applicants for admission to practice before it.*

In California, though the legislature is empowered to set minimal standards for admission to practice, it is the Supreme Court of the State which is vested with the ultimate authority to prescribe standards for admission to practice before it and to determine what applicants meet those standards. (*Re Lavine* (1935), 2 Cal. 2d 324, 327-328, 41 P. 2d 161, 162; *In re Hallinan* (1954), 43 Cal. 2d 243, 253-254, 272 P. 2d 768, 775.) In the exercise of this responsibility, the Supreme Court of California has determined that one refusing to answer relevant questions will not be admitted. In the opinion below, the Court approved the finding of the Committee that "Konigsberg had refused to answer its questions as to his membership in or affiliation with the Communist Party, that these questions were material to a proper determination of his qualifications, that his refusal to answer had obstructed the investigation which the statute requires, and that because of this refusal the committee is unable to certify him for admission." [1960 Rec. p. 55.] There can be, therefore, no question of what is the law on this point in the State of California. Nor, since each state is free to set its own standards for admission to

its bar, is it in issue whether this Court would choose to apply the same rule in its admission of practitioners to the Federal Bar. The sole issue is whether the law as applied in the State of California is so arbitrary, capricious and unreasonable as to deprive the applicant of his rights under the Constitution. (*Theard v. United States*, 354 U. S. 278, 281; *Re Sumners*, 325 U. S. 561, 570-571.)

(2) *The decision below was based upon established law and is entirely consistent with and predicated upon prior decisions and statutes available equally to the petitioner and the Committee.*

The legislature of California, prior to 1939,^{*} provided for the creation of a Committee of The State Bar to examine all applicants for admission to the practice of law, administer the requirements for admission, and certify to the Supreme Court of California for admission those applicants meeting the qualifications therefor. (Business and Professions Code §6046.) To fulfill these duties, the Committee was authorized to adopt such rules and regulations as might be necessary or advisable "for the purpose of making effective" the statutory qualifications for admission (Business and Professions Code §6047) and empowered to conduct hearings and receive and compel evidence regarding the

^{*}The basic authority of the Committee to examine applicants for admission was first provided in Sections 24 and 25 of The State Bar Act of 1927 (Calif. Stats. 1927, p. 41). Between the years 1927 and 1939, the authority granted by these sections was amended and amplified (Calif. Stats. 1929, pp. 1257, 1259, 1965; Calif. Stats. 1931, p. 1761; Calif. Stats. 1937, p. 1492) until it was codified in its present form in 1939 (Calif. Stats. 1939, pp. 347, 352).

qualifications of applicants. (Business and Professions Code §§6048, 6049.)

One of the substantive qualifications for admission, which it is the duty of the Committee to "make effective", is that the applicant not be a person "who advocates the overthrow of the Government of the United States or this State by force, violence, or other unconstitutional means." (Business and Professions Code §6064.1). This section specifically enjoins the Committee from certifying such a person for admission.

The court below, after citing these statutory provisions [1960 Rec. p. 53], held that Section 6064.1 "clearly requires the Committee to inquire" into the forbidden advocacy [1960 Rec. p. 56]; that questions relating to recent or present membership in the Communist Party were relevant to this inquiry [1960 Rec. p. 56]; that petitioner's refusal to answer the questions obstructed the inquiry; and that

"Implicit in the statutory provision for review of the committee's refusal to certify an applicant is the power of this court to admit one not so certified. But to admit applicants who refuse to answer the committee's questions upon these subjects would nullify the concededly valid legislative direction to the committee. Such a rule would effectively stifle committee inquiry upon issues legislatively declared to be relevant to that issue. We cannot in good conscience deny the committee the right to inquire into a matter as to which it must certify." [1960 Rec. 57-58.]

At the hearing of September 21, 1957, the Committee exhaustively warned the petitioner that the Commit-

tee construed the statutory directives under which it operated to require it to refuse to certify an applicant who refused to answer relevant inquiries into his qualifications. [1960 Rec. pp. 4-5, 22-23.]⁹ The petitioner either disagreed with this interpretation or was indifferent to the law of California in view of his insistence that he had a constitutional right to refuse to answer and yet be certified.

Therefore, the substance of the matter is that the petitioner was wrong and the Committee was right in its estimate of the existing law of California. The petitioner chose to stand on his estimate of what that law was, proved to be incorrect and suffered the normal consequences incident to ignoring or misgauging the effect of the existing law upon one's actions. It is respectfully submitted that this fact raises no constitutional issue independent of those considered in Point "C" of this Argument.

In addition to the significant fact that the petitioner was not the first applicant to be denied admission because of his refusal to answer pertinent questions posed

⁹For example, at the outset, Chairman Whitmore advised the petitioner, "I have generally outlined to Mr. Mosk the scope of the proposed hearing today. I should like to point out to Mr. Konigsberg, as well as to Mr. Mosk, that the functions of the Committee of Bar Examiners are really two-fold: First to investigate in connection with the requirements for admission to practice set forth in the Business and Professions Code; and second to make determinations. As a result of our two-fold purpose, particularly our function of investigation, we believe it will be necessary for you, Mr. Konigsberg, to answer our material questions or our investigation will be obstructed. We would not then as a result be able to certify you for admission." [1960 Rec. pp. 4-5.]

by the Committee,¹⁰ there is nothing new in the requirement that an applicant for admission to practice law display a high degree of candor and frankness with the Committee and the Court in disclosing matters in his background pertinent to his qualifications. (*Spears v. The State Bar* (1930), 211 Cal. 183, 294 Pac. 697; *State Bar v. Langert* (1954), 43 Cal. 2d 636, 276 P. 2d 596; *In re Lasley* (1923), 61 Cal. App. 59, 214 Pac. 284; *In re Wells* (1918), 36 Cal. App. 785, 172 Pac. 93; *In re Mash* (1915), 28 Cal. App. 692, 152 Pac. 961.)

In *Spears, supra* (a case in which an applicant swore that he had not been charged with any crime, whereas he had been so charged but not convicted), the Supreme Court of California commented upon an applicant's duty to make full disclosure of his background:

"At the threshold of the discussion it should be stated as definitely settled in this state that irre-

¹⁰On a few occasions applicants have refused to answer certain pertinent questions and the Committee has rejected their applications for such reason. The Supreme Court in effect has upheld the Committee in such a case by refusing to consider it *Cross v. Committee of Bar Examiners*, S. F. Nos. 18252, 18641 and 18922. Certiorari and mandamus denied. U. S. Supreme Court, Misc. 534 Oct. 1950 and Misc. 506 Oct. 1952.

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Sometimes the person under investigation invokes the privilege against self-incrimination. The Committee has declined to certify such persons for admission on the ground such refusal forecloses the Committee from effectively pursuing a legitimate and necessary line of inquiry. The California Supreme Court has recently denied a petition for writ of review in such a case, *Brooks v. Committee of Bar Examiners*, L. A. No. 23067; October 6, 1954. ("Character Investigation of Applicants for Admission," Gosco O. Farley, Secretary, Committee of Bar Examiners (1954), 29 Calif. State Bar Journal 454, 457, 466.)

spective of the outcome of any charges preferred against an applicant for admission to practice law in this state, whether he be convicted, acquitted or the charges dismissed, a duty rests upon said applicant to make a full disclosure of such charges to the committee charged with the duty and the responsibility of investigating his fitness to practice law in this state. We are aware that this requirement calls for a high degree of frankness and truthfulness on the part of the attorney making application for admission to practice law in this state, but no good reason presents itself why such a high standard of integrity should not be required. * * *

Spears v. The State Bar, 211 Cal. 183, 187, 294 Pac. 697, 698.

In *Langert, supra*, involving an applicant who had concealed prior disbarment proceedings which had been initiated against him in another state, the court explained the reason for the requirement that an applicant make complete and truthful disclosures to the Committee:

"It was Langert's plain duty to truly reply to the questions asked by the Committee of Bar Examiners. (*In re Jacobsen*, 105 Cal. App. 236 [287 P. 131]; *In re Lasley*, 61 Cal. App. 59, 60 [214 P. 284].) The facts with respect to his prior conduct in the practice of the law in Illinois might have justified an order refusing to allow him to take the bar examination in this state. Truthful answers to questions bearing upon his conduct in the communities in which he had lived before

coming to California, at the least, would have justified further investigation of his record."¹¹

State Bar v. Langert, 43 Cal. 2d 636, 639, 276 P. 2d 596, 597.

Although the petitioner chose to obstruct the investigation of the Committee into his qualifications by defiance rather than the more devious methods employed by the applicants questioned in the above cases, the result was exactly the same. His conduct prevented any further inquiry into the area he sought to foreclose. As in the case of *Langert*, "truthful answers" by the petitioner to questions bearing upon his membership in the Communist Party "at the least, would have justified further investigation of his record."

¹¹The comments of the District Court of Appeal in the *Mash* case are likewise pertinent: "The only defense that the respondent would make, if permitted, to the charges contained in the accusation, is, as foreshadowed by the allegations of his answer, that it was his opinion at the time he made his application that the criminal and disbarment proceedings prosecuted against him in other jurisdictions were neither bona fide nor just, and that therefore, the court would have granted his application regardless of such proceedings. In other words, having convinced himself that he was innocent of the charges previously preferred against him he concluded that even if the court had been informed thereof, it would have treated them as matters of little or no moment. If we were to concede the sufficiency of such a defense we would practically oust ourselves of jurisdiction to pass on the moral character of an applicant to practice law. * * * (Emphasis added.) (*In re Mash*, *supra*, 28 Cal. App. 692, 697, 153 Pac. 961, 963.)

C. The Refusal of the Supreme Court of the State of California to Admit to the Practice of Law an Applicant Who Prevents Determination of His Qualifications by Refusing to Disclose the Nature and Extent of His Association With the Communist Party in the Present and Recent Past Does Not Violate Any Constitutional Right of the Applicant.

The position taken by the petitioner before the Committee calls into question the very power of the State of California to admit to the practice of law only those who meet minimal qualifications determined by the State to be necessary in those vested with a vital public trust. For if petitioner is correct in his estimation of the limits imposed by the Constitution upon inquiry into the qualifications of applicants for admission to the Bar, the State will have no greater right to demand candid and frank disclosure from its prospective lawyers than from defendants before its criminal courts.

Each applicant for admission in California must execute under oath a formal application which contains inquiries regarding his age, residence, prior and present addresses, citizenship, occupation, general education, legal education and moral character. He is further required to furnish a set of his fingerprints. (*Rule VII, Rules Regulating Admission To Practice Law In California.*) Some of these avenues of inquiry are of paramount importance to a thorough investigation of the eligibility of the applicant; others, such as age where majority is not questioned, are of minimal or peripheral moment. However, few of the questions are directly related to the disclosure of illegal activities on the part of the applicant. Therefore, were petitioner's reasoning the law, an applicant might with impunity refuse to answer even the most important and relevant

questions posed to him and yet demand his admission to the Bar, for under petitioner's reasoning all that is required is that the applicant deny, in the terms of the statutes, the absence of prior illegal conduct and the advocacy of the forceable overthrow of the government. Inquiry regarding specific events or associations, however relevant to an investigation into the presence of the prescribed qualifications, is supposedly foreclosed by the constitutional protection against interference with freedom of speech. Fortunately, this result is not commanded by the Constitution. As pointed out by Mr. Justice Stewart with respect to the argument that the right of a lawyer to free speech might include the right to contumacious and unethical speech free from professional consequences,

"A lawyer belongs to a profession with inherited standards of propriety and honor, which experience has shown necessary in a calling dedicated to the accomplishment of justice. He who would follow that calling must conform to those standards.

"Obedience to ethical precepts may require abstinence from what in other circumstances might be constitutionally protected speech. * * *

Re Sawyer, 360 U. S. 622, 646-647.

It cannot be emphasized too strongly that The State Bar and Supreme Court of California have no interest in curtailing the freedom of the petitioner's speech. We do not contend that he may not speak to a certain end or that he must speak. We do insist, however, that one who desires to be vested with a position in which the liberties and property of his fellow citizens are to be placed in his trust must be candid and frank in disclos-

ing all details regarding his background which may bear upon his qualifications to be awarded that trust.

The brief of the petitioner belabors the point that his every action before the Committee of Bar Examiners and the Supreme Court of California has been motivated by a singular highmindedness and devotion to principle. Whether the petitioner has chosen to contest the authority of the Committee of Bar Examiners and the Supreme Court of California because of an honest personal creed or because he has something to hide is known only to himself or to such of his associates as might be uncovered by a further investigation resulting from his truthful answers to the questions rebuffed. By his conscious and deliberate obstruction of the inquiry into his qualifications, he has narrowed the issue to the power of the State of California to require candid and frank disclosure by applicants for admission to the Bar of matters relevant to their qualifications therefor.

Unfortunately, an inquiry into Communist affiliations today often evokes an emotionally charged response in one direction or the other. Earnest defenders of the Constitution rush into each such situation on behalf of or against the individual questioned entirely without regard to the good faith or fairness of his examiners. To neutralize and highlight the basic and important issue before this Court, consider what the situation might have been had the petitioner refused to disclose his association with the Mafia or a group conspiring to rob a bank. Under such circumstances, would the Committee be compelled by the Constitution to recommend the admission of the petitioner to the practice of law although he had frustrated the inquiry

of the Committee into a matter vitally affecting his moral qualifications? So stated, it seems obvious that the State may condition admission into its Bar upon the disclosure or negation of associations of that character. The question then presented is whether the result should be different because the inquiry frustrated related to advocacy of forcible overthrow of the government and the questions rebuffed related to the applicant's present membership in the Communist Party. Reason and the decisions of this Court dictate a negative response.

- (1) *The Inquiry by the Committee of Bar Examiners Into the Applicant's Present and Past Membership in the Communist Party Was Relevant to His Qualifications for Admission to the Bar and Did Not Relate to His "Political Beliefs."*

Section 6064.1 of the California Business and Professions Code requires that "no person who advocates the overthrow of the Government of the United States or of this State by force, violence or other unconstitutional means; shall be certified to the Supreme Court for admission and a license to practice law." As held by the Supreme Court of California; "this provision clearly requires the Committee [of Bar Examiners] to inquire as to such advocacy." [1960 Rec. p. 56.]

Both the Congress of the United States and the California Legislature have made specific findings that the Communist Party is an instrumentality of a foreign-controlled conspiracy to work the forcible overthrow of the Government of the United States.

68 Stat. 775, 50 U. S. C., Sec. 841 (Supp. 1954);

64 Stat. 987, 50 U. S. C., Sec. 781;

Calif. Gov. Code, Sec 1027.5.

Pertinent provisions of these statutes and similar authorities are set forth in Exhibit B.

This Court has also recently reiterated the relevancy of membership in the Communist Party to advocacy of the overthrow of the United States Government by force.

“On these premises, this Court in its constitutional adjudications has consistently refused to view the Communist Party as an ordinary political party, and has upheld federal legislation aimed at the Communist problem which in a different context would certainly have raised constitutional issues of the gravest character. [Citations] On the same premises this Court has upheld under the Fourteenth Amendment state legislation requiring those occupying or seeking public office to disclaim knowing membership in any organization advocating overthrow of the Government by force and violence, which legislation none can avoid seeing was aimed at membership in the Communist Party. [Citations] Similarly, in other areas, this Court has recognized the close nexus between the Communist Party and violent overthrow of government. [Citations] To suggest that because the Communist Party may also sponsor peaceable political reforms the constitutional issues before us should now be judged as if that Party were just an ordinary political party from the standpoint of national security, is to ask this Court to blind itself to world affairs which have determined the whole course of our national policy since the close of World War II, affairs to which Judge Learned Hand gave vivid expression in his opinion in

United States v. Dennis (CA2 NY) 183 F.2d 201, 213, and to the vast burdens which these conditions have entitled for the entire Nation."

Barenblatt v. United States, 360 U. S. 109, 128-129.

In spite of the overwhelming evidence of the nature of the Communist conspiracy and the findings of the various responsible branches of government, of which the above are but a sampling, the petitioner continues to sound the tired tocsin of forbidden intrusion into "political belief." (Pet. Br. pp. 18, 26, 39 and 41.) The Committee and the Supreme Court of California are not concerned with the petitioner's political beliefs; they are vitally concerned with his membership in an organization dedicated to forcibly dispossessing the citizens of the United States of their constitutional form of government.

We are not unmindful of the fact that an applicant may not be denied admission to the Bar solely because of membership in the Communist Party during the distant past and without regard to the character of or reasons for that association. However, we do contend that membership in this organization is relevant to an inquiry into advocacy of forcible overthrow and that an affirmative answer would justify further probing into the petitioner's knowledge and understanding of its aims and participation in its activities. No responsible agency of the government when faced with the issue has considered the contrary to be true. (*Orloff v. Willoughby*, 345 U. S. 83; *Garner v. Board of Pub. Wks.*

of Los Angeles, 341 U. S. 716; *Adler v. Board of Education*, 342 U. S. 485; *Steinmetz v. Cal. State Board of Education* (1954), 44 Cal. 2d 816, 285 P. 2d 617.)

It is precisely this area of inquiry which has been denied to the Committee by the petitioner.

(2) *The Refusal of the Supreme Court of California to Admit to the Practice of Law an Applicant Who Obstructs an Inquiry into His Qualifications by Refusing to Disclose Information Relevant to a Determination of Those Qualifications Does Not Violate Any Provision of the Constitution.*

The basis of the refusal of the Supreme Court of California to admit the petitioner is set forth in the opinion below:

"Determination whether petitioner was a member of the party which has been legislatively determined to advocate overthrow of the government was blocked by his refusal to answer. * * * The committee's refusal to recommend him for admission was based upon his refusal to answer inquiries about his relevant activities—not upon those activities themselves. * * * Petitioner does not question the constitutionality of the code section which prohibits certification of one who advocates unlawful overthrow of the government, nor of the federal and state legislative declarations that the Communist Party seeks such overthrow. Implicit in the statutory provision for review of the committee's refusal to certify an applicant is the power of this court to admit one not so certified. But

to admit applicants who refuse to answer the committee's questions upon these subjects would nullify the concededly valid legislative direction to the committee. Such a rule would effectively stifle committee inquiry upon issues legislatively declared to be relevant to that issue. We cannot in good conscience deny the committee the right to inquire into a matter as to which it must certify." [1960 Rec. pp. 57-58.]

The validity of the Committee's inquiry and of the consequences to petitioner arising from his frustration of this inquiry is amply supported by the decisions of this Court.

For example, witnesses appearing before state and federal legislative committees investigating subversive activities may be punished for refusal to answer questions relating to their membership in the Communist Party or their association with Communist activities. (*Barenblatt v. United States*, 360 U. S. 109; *Uphaus v. Wyman*, 360 U. S. 72.) The action taken in both *Barenblatt* and *Uphaus* was far more restrictive of the individual's freedom to speak or not to speak than that taken by the court below. In each case, the subject of the inquiry was punished for his refusal to divulge either his membership in the Communist Party or the names of those persons connected with a camp deemed to foster subversive activities. Nevertheless, it was concluded "that the balance between individual and the governmental interests here at stake must be struck in favor of the latter, and that therefore the provisions of the First Amendment have not been offended." (*Barenblatt v. United States*, 360 U. S. 109, 134.)

More directly to the point, public employees may be discharged from their employment for refusal, whether on claims of constitutional privilege or not, to answer questions by their employers, relating to their membership in the Communist Party. (*Beilan v. Board of Education*, 357 U. S. 399; *Eckner v. Casey*, 357 U. S. 468; *Nelson and Globe v. County of Los Angeles*, 362 U. S. 1, 4 L. Ed. 2d 494.) Mr. Lerner created doubts regarding his "trust and reliability" as a subway conductor in New York by his refusal to answer questions by a state investigative agency pertaining to his present membership in the Communist Party. Mr. Globe lost his temporary position with the Los Angeles County Department of Charities as a result of his "insubordination" in refusing to answer questions posed by the House Un-American Activities Subcommittee relating to his membership in a subversive organization. In each instance, no violation of constitutional rights was occasioned by the dismissal of the recalcitrant witness.

Beilan v. Board of Public Education, 357 U. S. 399, is perhaps most directly dispositive of the issues in the case presently before this Court. In *Beilan*, this Court affirmed the dismissal of a Pennsylvania school-teacher on grounds of "incompetence" as evidenced by his refusal to answer to his Superintendent "whether or not he had been the Press Director of the Professional Section of the Communist Political Association in 1944." Just as did Mr. Konigsberg, Mr. Beilan refused to answer this question upon the ground that the inquiry was directed to his "political and religious" beliefs and that he was not obliged to answer such a question. On this basis, Mr. Beilan was found to have indicated his

unfitness and unsuitability as a schoolteacher by his refusal to answer the relevant inquiries of his Superintendent.

"The question asked of petitioner by his Superintendent was relevant to the issue of petitioner's fitness and suitability to serve as a teacher. Petitioner is not in a position to challenge his dismissal merely because of the remoteness in time of the 1944 activities. It was apparent from the circumstances of the two interviews that the Superintendent had other questions to ask. Petitioner's refusal to answer was not based on the remoteness of his 1944 activities. He made it clear that he would not answer any question of the same type as the one asked. * * * The Board based its dismissal upon petitioner's refusal to answer any inquiry about his relevant activities—not upon those activities themselves. It took care to charge petitioner with incompetency, and not with disloyalty. It found him insubordinate and lacking in frankness and candor—it made no finding as to his loyalty."

Beilan v. Board of Public Education, 357 U. S. 399, 405-406.

This Court held that the unquestioned right of a schoolteacher to the freedom of his speech did not serve to relieve him from his obligations of frankness, candor and cooperation in answering inquiries made of him by a Board examining into his fitness to serve as a public schoolteacher.

"By engaging in teaching in the public schools, petitioner did not give up his right to freedom of belief, speech or association. He did, however, undertake obligations of frankness, candor and co-

operation in answering inquiries made of him by his employing Board examining into his fitness to serve it as a public school teacher.

"A teacher works in a sensitive area in a schoolroom. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society, cannot be doubted."

Beilan v. Board of Public Education, 357 U. S. 399, 405.

—Unless this Court should find that the state has a less "vital concern" in the integrity of members of its Bar than in the integrity of its schoolteachers, subway conductors and socialworkers, the principles of the *Beilan*, *Lerner* and *Nelson* cases are directly applicable to this case. No prior decision of this Court has indicated the possibility of such a finding.

"The two judicial systems of courts, the state judicatures and federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included. The court's control over a lawyer's professional life derives from his relation to the responsibilities of a court. The matter was compendiously put by Mr. Justice Cardozo, while Chief Judge of the New York Court of Appeals. "Membership in the bar is a privilege burdened with conditions" (Matter of Rouss, [221 NY 81, 84, 116 NE 782]). The appellant was re-

ceived into that ancient fellowship for something more than private gain. He became an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice." *People ex rel. Karlin v. Culkin*, 248 N.Y. 465, 470, 471, 162 N.E. 487, 489, 60 ALR 851. * * *

Theard v. United States, 354 U. S. 278, 281.

The quotation of Mr. Justice Cardozo from the *Rouss* case continues:

"Membership in the bar is a privilege burdened with conditions. A fair private and professional character is one of them. Compliance with that condition is essential at the moment of admission; but it is equally essential afterwards. * * * [Citing cases] Whenever the condition is broken the privilege is lost. To refuse admission to an unworthy applicant is not to punish him for past offenses. The examination into character, like the examination into learning, is merely a test of fitness. * * *

In re Rouss, 221 N. Y. 81, 116 N. E. 782.

The position of the attorney in California is one of responsibility and trust. "The right to practice law not only presupposes in its possessor integrity, legal standing and attainment, but also the exercise of a special privilege, highly personal and partaking of the nature of a public trust." (*Townsend v. The State Bar* (1930), 210 Cal. 362, 364, 291 Pac. 837, 838.) "An attorney at law is a member of an ancient, honorable and deservingly honored profession. He is regarded as an officer of the court, of any court in which he appears." (*People v. Mattson* (1959); 51

Cal. 2d 777, 793, 336 P. 2d 937, 949.) His responsibilities to the people of California are spelled out by the legislature in Business and Professions Code §6068:

"It is the duty of an attorney:

(a) To support the Constitution and law of the United States and of this State.

(b) To maintain the respect due to the courts of justice and judicial officers.

(c) To counsel or maintain such actions, proceedings or defenses only as appear to him legal or just, except the defense of a person charged with a public offense.

(d) To employ, for the purpose of maintaining the causes confided to him such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

(e) To maintain inviolate the confidence, and at every peril to himself to preserve the secrets, of his client.

(f) To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.

(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

(h) Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed."

California Business and Professions Code, Section 6068.

An order admitting an applicant to the practice of law is a judgment of the Court that the applicant possesses the requisite qualifications in both character and learning to fulfill this public trust. (*Ex parte Robinson*, 19 Wall. 505, 512.) Surely the body charged with investigating the qualifications of such an applicant has a legitimate interest in requiring a candid disclosure of factors bearing upon his qualifications equal to or greater than the interest of those charged with investigating schoolteachers, subway conductors and social workers.

The attempt of the petitioner to distinguish *Beilqu* and similar cases is predicated upon the mistaken supposition that they may be pigeonholed under the label "public employee cases." In truth, the process applied in those cases and this case is identical. The interest of the public in requiring candor and frankness of the employee or applicant is balanced against the interest of that employee or applicant in refusing to divulge areas of his background. Applying this test, it seems to us that the scales tip more strongly toward full disclosure in the case of a prospective attorney than in the case of a minor public functionary.

We have noted the proprietary expropriation by petitioner and *amici curiae* of the concept of a fearless and independent bar, unafraid to defend one who espouses the unpopular cause. There is of course no dispute with the proposition that the achievement and maintenance of a bar of such composition is of paramount importance. In point of fact, the courts and legislature of the State of California have been assiduous in fostering an independent and fearless bar. (Bus. & Prof. Code §6068(h); *Gallagher v. Municipal Court*

(1948), 31 Cal. 2d 784, 192 P. 2d 905; *Chula v. Superior Court*, (1952), 109 Cal. App. 2d 24, 240 P. 2d 398.) However, we cannot agree with petitioner and *amici curiae* that a *sine que non* to attainment of such a bar is the admission to it of those advocating the forcible demolition of our constitutional system of justice or those who refuse to divulge areas of their background directly bearing upon their qualifications to practice.

Finally, the time-honored technique of raising hypothetical future abuses on the part of the Committee is as irrelevant here as in any other case. Suppose the Committee purported to forbid political activity by attorneys? Suppose the Committee interrogated applicants regarding their religious beliefs? The oft-quoted statement of Mr. Justice Holmes regarding the power to tax is equally applicable to the power to investigate. "But this Court, which so often has defeated the attempt to tax in certain ways, can defeat an attempt to discriminate or otherwise go too far without wholly abolishing the power to tax. The power to tax is not the power to destroy while this Court sits." (*Panhandle Oil Co. v. Mississippi ex rel. Knox*, 277 U. S. 218, 223.) Similarly, in order to prevent unlikely future abuses by the Committee of its authority to examine the qualifications of applicants it is not necessary to destroy the regulation of the moral and professional fitness of the Bar.

(3) Petitioner Was Explicitly Warned of the Consequences of His Refusal to Answer.

Petitioner was clearly and unequivocally warned by the Committee of Bar Examiners that failure to answer the Committee's questions blocked their inquiry and would prevent his certification.

"* * * As a result of our two-fold purpose, particularly our function of investigation, we believe it will be necessary for you, Mr. Konigsberg, to answer our material questions or our investigation will be obstructed. We would not then as a result be able to certify you for admission. * * *"

[1960 Rec. p. 4; see also pp. 22, 26.]

Moreover, he was advised in detail of why these inquiries were considered necessary and why his refusal to answer would prevent his certification.

"If you answered the question, for example, that you had been a member of the Communist Party during some period since 1951 or that you were presently a member of the Communist Party, the Committee would then be in a position to ask you what acts you engaged in to carry out the functions and purposes of that party, what the aims and purposes of the party were, to your knowledge, and questions of that type. You see by failing to answer the initial question there certainly is no basis and no opportunity for us to investigate with respect to the other matters to which the initial question might very well be considered preliminary." [1960 Rec. p. 29; see also p. 31.]

In *Beilan v. Board of Public Education*, 357 U. S. 399, the dismissed schoolteacher contended that he was not sufficiently warned. This argument was rejected:

"Petitioner complains that he was denied due process because he was not sufficiently warned of the consequences of his refusal to answer his Superintendent. The record, however, shows that the Superintendent, in his second interview, specifically warned petitioner that his refusal to answer 'was a very serious and a very important matter and that failure to answer the questions might lead to his dismissal.' That was sufficient warning to petitioner that his refusal to answer might jeopardize his employment."

Beilan v. Board of Public Education, 357 U. S. 399, 408.

Under no stretch of the imagination could the warning in the present case be said to be less explicit than that in the *Beilan* case. There can be no question that petitioner was fully and adequately warned and that lack of warning is not a factor in the present case.

VI.

Conclusion.

The prior decision of this Court did not purport to determine that the petitioner must be admitted to the California Bar. On the contrary, his case was remanded for further proceedings not inconsistent with the decision.

In the course of these further proceedings, the petitioner refused to answer questions pertaining to his association with the Communist Party in the present and recent past although repeatedly warned by the Com-

mittee examining him that his continued refusal would result in the Committee's failure to certify him for admission to practice. On the basis of its construction of existing statutes, and in accordance with its holdings in previous cases, the Supreme Court of California refused to admit the petitioner on the ground that his willful failure to answer questions relevant to his qualifications to practice law had obstructed the inquiry of the Committee and prevented an intelligent determination of his qualifications.

The action of the California Supreme Court in refusing the petitioner admission upon this ground was an entirely reasonable and constitutional exercise of its authority to insure the professional and moral fitness of applicants who would practice before it.

The decision of the California Supreme Court should therefore be affirmed.

Respectfully submitted,

FRANK B. BELCHER,
ROBERT D. BURCH and
RALPH E. LEWIS,

By FRANK B. BELCHER,
Attorneys for Respondents.

EXHIBIT "A"

L. A. No. 23266.

In the Supreme Court of the State of California.

Raphael Konigsberg, Petitioner, v. State Bar of California and the Committee of Bar Examiners of the State Bar of California, Respondents.

Report of the Committee of Bar Examiners.

To the Honorable Phil S. Gibson, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the State of California:

I.

On July 10, 1957, the following order was made in the above entitled matter:

"Pursuant to mandate of the Supreme Court of the United States, it is ordered that the decision of this Court, filed April 20, 1955, be vacated, and the matter of admitting Raphael Konigsberg to the the practice of law in all the courts of this State is referred to the Committee of Bar Examiners for further proceedings.

"CARTER, J. is of the opinion that the application of Raphael Konigsberg for admission to practice law in all of the courts of this State should now be granted.

/s/ Gibson, Chief Justice."

II.

Pursuant to this order, the following action was taken by the Committee of Bar Examiners in the matter of the application of Raphael Konigsberg for admission to practice law in the State of California:

(1) The Committee carefully considered the opinion of the Supreme Court of the United States in the mat-

ter entitled "Raphael Konigsberg, Petitioner, v. State Bar of California and Committee of Bar Examiners of the State Bar of California", decided May 6, 1957, 353 U. S., 1 L. Ed. 2d 810, 77 S. Ct.

(2) On September 21, 1957, at a meeting of the Committee in Los Angeles, at which all of the members of the Committee were present, the applicant appeared with his attorney, Edward Mosk, Esq. At this meeting the applicant's petition for admission was further heard by the Committee. An argument by the attorney for the applicant in support of the application for admission was also heard. The applicant was sworn and testified at the hearing. A witness produced by the applicant was sworn and testified. Written evidence was offered by the applicant, and was received by the Committee. The written record of all previous hearings by the Committee and one of its subcommittees on the application of Raphael Konigsberg for admission was incorporated as part of the record of the further hearing, by the stipulation of the applicant and by the Committee.

(3) The application was then submitted by the applicant and by his attorney.

III.

At the hearing on September 21, 1957, the committee advised the applicant and his attorney that the refusal of applicant to answer material questions put to him by the Committee would obstruct the investigation by the Committee of applicant's qualifications for admission to practice law, with the result that the Committee would not be able to certify him for admission.

IV.

At the hearing on September 21, 1957, applicant refused to answer any questions put to him by the Committee concerning his past or present membership in or affiliation with the Communist Party.

V.

After further consideration of the entire record before it, the Committee finds and concludes:

(1) That the questions put to the applicant by the Committee concerning past or present membership in or affiliation with the Communist Party are material to a proper and complete investigation of his qualifications for admission to practice law in the State of California.

(2) That the refusal of applicant to answer said questions has obstructed a proper and complete investigation of applicant's qualifications for admission to practice law in the State of California.

(3) That the refusal of applicant to answer said questions has obstructed a necessary and proper function of the Committee under Section 6046 and related sections of the Business & Professions Code of the State of California and under the Rules Regulating Admission to Practice Law in California adopted pursuant to Section 6047 and related sections of said Code.

(4) That in view of the foregoing, the Committee is unable to certify that applicant possesses the requisite qualifications or has fulfilled the requirements for admission to practice law in the State of California.

In Witness Whereof, the Committee of Bar Examiners of the State Bar of California respectfully submits this report of its proceedings on the reference made

to it by the Supreme Court of the State of California on July 10, 1957, together with the transcript of the hearing before the Committee on September 21, 1957, and the exhibits submitted by the applicant at that hearing.

Dated: November 9, 1957.

Sharp Whitmore,
Vincent H. O'Donnell,
George Harnagel, Jr.
Forrest E. Macomber,
Gerald P. Martin,
Thomas H. McGovern,
John B. Surr,

The Committee of Bar Examiners
of the State Bar of California,
By Sharp Whitmore,
Chairman.

EXHIBIT "B".

The United States Congress has found:

"The Congress hereby finds and declares that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States. * * *

68 Stat. 775, 50 U. S. C. Sec. 841 (Supp. 1954).

"As a result of evidence adduced before various committees of the Senate and House of Representatives, the Congress finds that—

* * *

"(9) In the United States those individuals who knowingly and willfully participate in the world Communist movement when they so participate, in effect repudiate their allegiance to the United States, and in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement. . . .

* * *

"(15) The Communist movement in the United States is an organization numbering thousands of adherents, rigidly and ruthlessly disciplined. Awaiting and seeking to advance a moment when the United States may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits, that overthrow of the Government of the United States by force and violence may seem possible of achievement, it seeks converts far and wide by an extensive system of schooling and indoctrination. Such

preparations by Communist organizations in other countries have aided in supplanting existing governments. The Communist organization in the United States, pursuing its stated objectives, the recent successes of Communist methods in other countries, and the nature and control of the world Communist movement itself, present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such worldwide conspiracy and designed to prevent it from accomplishing its purpose in the United States."

64 Stats. 987, 50 U. S. C. Sec. 781.

Similar findings have been made in California:

"(a) There exists a world-wide revolutionary movement to establish a totalitarian dictatorship based upon force and violence rather than upon law.

* * * * *

"(d) Within the boundaries of the state of California there are active disciplined communist organizations presently functioning for the primary purpose of advancing the objectives of the world communism movement, which organizations promulgate, advocate, and adhere to the precepts and the principles and doctrines of the world communism movement. * * *

"(c) One of the objectives of the world communism movement is to place its members in state and local government positions and in state supported educational institutions. * * *

"There is a clear and present danger, which the Legislature of the State of California finds is great and imminent, that in order to advance the program, policies and objectives of the world communism movement, communist organizations in the State of California and their members will engage in concerted effort to hamper, restrict, interfere with, impede, or nullify the efforts of the State and the public agencies of the State to comply with and enforce the laws of the State of California and their members will infiltrate and seek employment of the State and its public agencies."

Cal. Gov. Code, Sec. 1027.5

Judicial findings and comments have confirmed these legislative findings. The following are illustrative:

"The jury found that the Party rejects the basic premise of our political system—that change is to be brought about by nonviolent constitutional process. The jury found that the Party advocates the theory that there is a duty and necessity to overthrow the Government by force and violence. It found that the Party entertains and promotes this view, not as a prophetic insight or as a bit of unworldly speculation, but as a program for winning adherents and as a policy to be translated into action."

Dennis v. United States, 341 U. S. 494, from concurring opinion of Mr. Justice Frankfurter at pages 546-547.

"The Communists have no scruples against sabotage, terrorism, assassination, or mob disorder; but violence is not with them, as with the anarchists, an end in itself. The Communist Party advocates force only when prudent and profitable. Their strategy of stealth precludes premature or uncoordinated outbursts or violence, except, of course, when the blame will be placed on shoulders other than their own. They resort to violence as to truth, not as a principle, but as an expedient."

Dennis v. United States, 341 U. S. 494, from concurring opinion of Mr. Justice Jackson at page 564.

"1. The goal of the Communist Party is to seize power of government by and for a minority rather than to acquire power through the vote of a free electorate. * * *

"2. The Communist Party alone among American Parties past or present is dominated and controlled by a foreign government. * * *

"3. Violent and undemocratic means are the calculated and indispensable methods to attain the Communist Party's goal. * * *

"4. The Communist Party has sought to gain this leverage and hold on the American population by acquiring control of the labor movement. * * *

"5. Every member of the Communist Party is an agent to execute the Communist program. * * *

American Communications Assoc. v. Douds, 339 U. S. 382, from concurring and dissenting opinion of Mr. Justice Jackson at page 425-431.

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IN THE

Supreme Court of the United States

October Term, 1960

No. _____

RAIMUND KONIGSBERG,

Petitioner,

vs.

STATE BAR OF CALIFORNIA,

Respondent.

MOTION FOR LEAVE TO FILE BRIEF
AMICI CURIAE AND BRIEF.

By ROBERT W. KENNY,

1577 Beverly Boulevard,

Los Angeles 26, California.

For Attorneys Amici Curiae.

I had no hesitation in answering . . . that the bar ought, in my opinion, to be independent and impartial, at all times and in every circumstance . . . and that every lawyer must hold himself responsible not only to his country, but to the highest and most infallible of all tribunals, for the part he should act."

—John Adams

"The Selected Writings of
John Quincy Adams"

Knopf, New York, 1946, p. 29

"Through many channels I came to learn the noble history of the profession of law. I came to realize that without a bar trained in the traditions of courage and loyalty our constitutional theories or individual liberty would cease to be a living reality."

—Henry L. Stimson

"On Active Service in Peace and War."

Stimson & Bundy, Introduction by
Mr. Stimson, p. XXI-XXII

"A man's life, like a piece of tapestry, is made up of many strands which interwoven make a pattern; to separate a single one and look at it alone not only destroys the whole, but gives the strand itself a false value."

—Learned Hand

317 U. S. XI-XVI

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IN THE
Supreme Court of the United States

October Term, 1960

No.

RAPHAEL KONIGSBERG,

Petitioner,

vs,

STATE BAR OF CALIFORNIA,

Respondent.

**MOTION FOR LEAVE TO FILE BRIEF
AMICI CURIAE.**

*To the Honorable Chief Justice of the United States
and to the Associate Justices of the Supreme Court
of the United States:*

The undersigned respectfully move this Honorable Court for leave to file brief amici curiae in this case. This brief is submitted in support of the petitioner herein, from whom consent for the filing of this brief has been obtained. The respondent, however, has refused to consent, taking the position that this Honorable Court should determine whether or not this brief should be filed and considered.

This amici brief is submitted on behalf of a group of California attorneys who are vitally concerned with

the effect the decision in this case will have upon the independence of the bar. The brief which it is proposed to file deals with that question from the viewpoint of the bar and the general public rather than from the approach properly taken by the petitioner in arguing his own case. The individuals on whose behalf this motion is made believe that in arriving at a decision the Court should give the most thorough consideration to the impact of what the Court says and does upon the maintenance of a free, courageous and truly independent bar not only in the State of California but throughout the land.

Respectfully submitted,

By ROBERT W. KENNY,

For Attorneys Amici Curiae.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

No. _____

RAPHAEL KONIGSBERG,

Petitioner,

vs.

STATE BAR OF CALIFORNIA,

Respondent.

**BRIEF AMICI CURIAE IN UNITED STATES
SUPREME COURT:**

The signers of this brief are all members of the California Bar. We are deeply concerned with the necessity that the State examine carefully, indeed zealously, into the character and the qualifications of every applicant for membership in the Bar, for we deem the responsibilities of an attorney to be far above those of most members of society.

We are equally concerned, however, that the State, in its dealings with applicants for admission to the Bar, as well as with other persons, adhere scrupulously to the standards of fairness required by the Constitutional guarantees of due process and equal protection of the laws. Neither the Bar, nor the State acting through the organized Bar of California may, in our view, arrogate

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to itself the right, in a particular instance, to overrule the "law of the case" as set down by the United States Supreme Court, or to make *ad hoc* "rules" without the sanction of law.¹

We do not feel that lawyers are entitled to any special privileges. However, it is from us, as a class, that there have always come those who stand as defenders, under the law, between the individual and the oppressions to which society is sometimes heir.

The best tradition of our profession was quietly but eloquently summarized by one who best exemplified it:

"Through many channels I came to learn and understand the noble history of the profession of the law. I came to realize that without a Bar trained in the traditions of courage and loyalty, our constitutional theories of individual liberty would cease to be a living reality. I learned of the experience of those many countries possessing constitutions and bills of rights similar to our own, whose citizens had nevertheless lost their liberties because they did not possess a bar with sufficient courage and independence to establish those rights by a brave assertion of the writs of habeas corpus and certiorari. So I came to feel that the American lawyer should regard himself as a potential officer of his government and as a defender of its laws and constitution. I felt that if the time should ever come when this tradition had faded out and the members of the bar had become merely the servants of business, the future of our liberties would be gloomy indeed."¹

¹On Active Service in Peace and War. Stimson & Bundy Introduction by Mr. Stimson, Page XXI-XXII.

Our State of California has embodied this same approach to the lawyers' responsibility in our law which commands each of us

"... never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed."²

This Court has pointed out, with approval, that

"The public has almost as deep an interest in the independence of the bar as of the bench."³

This Court has said in this very case,

"A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important both to society and the bar itself that lawyers be unintimidated—free to think, speak and act as members of an independent Bar."⁴

We cherish this right for ourselves—and we are strong in our belief that it should not be denied to those who would become members of the Bar. To deny this right to them is as unconstitutional as it would be to deny it to us.

What is the difference between what this Court has already found and decided in this case and what the Committee of the Bar Examiners and the majority of the California Supreme Court rely upon as valid grounds for denying petitioner the right to practise law? It is this and only this: In the 1953-54 hearings the Com-

²B & P Code, §6068(H).

³*Cammar v. United States*; 350 U. S. 399, 407.

⁴353 U. S. 252, 273.

mittee asked Konigsberg whether he was then or ever had been a member of the Communist Party, but did not tell him that his refusal to answer would, in and of itself, be sufficient reason to deny him admission to the Bar.⁵

In the 1957 hearing, after this Court had remanded the case to the California Supreme Court "for further proceedings not inconsistent with this opinion" and the California Supreme Court, by a divided vote, referred the case back to the State Bar for further proceeding, the State Bar, through its Committee of Bar Examiners, held a hearing⁶ and at this hearing the Committee this time told Konigsberg that if he failed to answer questions (the same questions that he had declined to answer at the previous hearing) about Communist Party membership he could be denied admission to the Bar.

Konigsberg again refused to answer such questions, stating that his refusal was grounded upon the same Constitutional and principled reasons which this Court had found to be neither frivolous nor taken in anything but good faith. On this ground and this ground alone he was refused admission to the Bar, although the Cali-

⁵It is obvious that the Bar Committee itself did not consider this, in and of itself, to be sufficient reason for such action for, as this Court pointed out,

"In presenting its version of the questions before this Court, the Bar Committee did not suggest that the denial of Konigsberg's application could be upheld merely because he had failed to answer questions. Nor was such a position taken on oral argument. Counsel, instead, reiterated what the Bar Committee had contended throughout, namely, that Konigsberg was rejected because he failed to dispel substantial doubts raised by the evidence in the record about his character and loyalty." (353 U. S. 252, 261.)

⁶Judge Peters of the California Supreme Court called this "a so-called hearing." (52 Cal. 2d 764, 779.)

ifornia Supreme Court points out. The Committee action now before us contains no finding or conclusion that petitioner had failed to establish either his good moral character or his abstention from advocacy of overthrow of the Government." (*Konigsberg v. State Bar*, 52 Cal. 2d 769, 772.)

To what lengths of obedience must a man go, whose good moral character has been affirmatively certified to by the United States Supreme Court on the basis of a full record of his life's activities, in order to satisfy a committee of the Bar that he is qualified to practise law? As pointed out in the petition for a writ of certiorari, Konigsberg told the Committee in the 1957 hearing that he had declined to answer similar questions on grounds of moral principle at the previous hearings and that he "could hardly be expected at this point for expediency to give up principles that have been upheld by the highest court of our country."

When Konigsberg applied for admission to the Bar there was, as this Court pointed out, "nothing in the California statutes, the California decisions, or even in the Rules of the Bar Committee, which has been called to our attention, that suggests that failure to answer a Bar Examiner's inquiry, is *ipso facto*, a basis for excluding an applicant from the Bar, irrespective of how overwhelming is his showing of good character or

And also, as we have pointed out above, that, "Thus, a finding that he was not of good moral character or that he advocated overthrow of the Government would be inconsistent with the decision of the United States Supreme Court upon the previous record." (52 Cal. 2d 769, 771-2.) Further, even the question of treating advocacy of force and violence as a disqualification was itself reserved by the United States Supreme Court in the first *Konigsberg* decision, 353 U. S. 252, 273, fn. 35.

loyalty or how flimsy are the suspicions of the Bar Examiners.⁸ There is still nothing in the California statutes or the Rules of the Bar Committee or the California decisions (except the California Supreme Court decision here under review) which makes such failure, *ipso facto*, a basis for excluding an applicant from the Bar.

To conjure up such a rule or dictum by fiat of the Bar Committee designed for this particular case, four years after applicant had applied for admission to the Bar and after the United States Supreme Court had reversed the Bar Committee's action in excluding him, violates every element of fair play which due process and equal protection call for. Rules cannot be made up as a tribunal goes along to meet individual cases and more than established rules can be changed one-sidedly by administrative or governmental fiat to make it easier for a governmental or quasi-governmental body to meet the exigencies of a particular situation. As Mr. Justice (then Professor) Frankfurter said, in the view adopted by the Court in *Colyer v. Skeffington*:⁹

"Now if there is one thing that is established in the law of administration, I take it that it is that a rule cannot be repealed specifically to affect a case under consideration by the administrative authorities; that is, if there is an existing rule which protects certain rights, it violates every sense of decency, which is the very heart of due process, to repeal that protection, just for the purpose of accomplishing the ends of the case which come before the administrative authority."

⁸*Konigsberg v. State Bar*, 353 U. S. 252, 260.

⁹*Colyer v. Skeffington*, 265 Fed. 17, 48.

That is precisely what has been done here by the Bar Committee and approved by the California Supreme Court—and without even making a rule of general application. Just as was held in the *Colyer* case, *supra*, the improvisation by the Committee here of a "rule" which had never previously existed by California statute, decision or Bar Committee Rule "for the purpose of accomplishing the ends of the case", i.e., barring this applicant from admission to the Bar, "violates every sense of decency which is the heart of due process."

The "evidence" upon which the Bar Committee relied in the 1953 hearing has been characterized by this Court as "the suspicions which apparently were the basis for the Committee's actions".¹⁰

But this Court went even much further, affirmatively, in disposing of the issue of past Communist Party membership, when it summed up its conclusions by saying:

"As we said before, the mere fact of Korngold's past membership in the Communist Party, if true, without anything more, is not an adequate basis for concluding that he is disloyal or a person of bad character. A lifetime of good citizenship is worth very little if it is so frail that it cannot withstand the suspicions which apparently were the basis for the Committee's action."¹¹

¹⁰353 U. S. 252 at 274. This Court, at pages 266-268 dealt fully with this so-called "evidence" (including the acknowledgment of Counsel for the Bar Committee on oral argument that "Mrs. Bennett's testimony left much to be desired, that I concede Her identification of this man is not all that you might wish.") and we need not repeat that here.

¹¹353 U. S. 252, 273-274.

* In these words the Court recognized the great validity of Learned Hand's deeply perceptive words which we set forth at the opening of this Brief and which we repeat at this point:

"A man's life, like a piece of tapestry, is made up of many strands which interwoven make a pattern; to separate a single one and look at it alone not only destroys the whole, but gives the strand itself a false value."¹²

The Committee of Bar Examiners has had before it, in this case, not once but twice a full picture of the many interwoven strands which make up the tapestry of the life of this applicant for admission to the Bar. Its specific determination in the first (1953) hearing that the applicant had not sustained the burden of proving that (1) he was possessed of good moral character or (2) that he did not advocate the overthrow of the Government of the United States or the State of California by force, violence or other unconstitutional ground *was specifically reversed* by this Court.¹³

At the second (1957) hearing, it appeared that the Committee had, since the first hearing, admittedly employed an independent investigator to investigate Kongsberg. Since it did not produce this investigator, it can, and indeed must, be presumed that he had found no additional evidence to support its "suspicions" which this Court found insufficient to support its previous

¹²317 U. S. XI-XVI.

¹³"In this case, we are compelled to conclude that there is no evidence in the record which rationally justifies a finding that Kongsberg failed to establish his good moral character or failed to show that he did not advocate forceful overthrow of the Government." (353 U. S. 252, 273.)

conclusion. The Committee, in fact, produced no additional evidence of any sort whatever and it must therefore be concluded that it had none.

The Committee, composed of men skilled in the law, must then have known that to ask Konigsberg again the very same questions which he had refused to answer previously on principled and constitutional grounds could call forth from Konigsberg only one of two responses—either a reaffirmation of what this Court found to be his principled refusal to answer or an abject abandonment of his principles under the pressure of the Committee's warning that it would refuse to certify him unless he knuckled under and sacrificed his conscience to expediency.

Thus, in complete disregard of what Learned Hand has called "the hallowed phrases"¹⁴ of the First and Fifth Amendment¹⁵ the Committee required Konigsberg either to surrender what this Court has accepted as his deeply held principle bottomed on his honest belief in the meaning of the Constitution of the United States or to cling to his principle and be denied the right to practise the profession for which he had been trained.

The Committee's present (and persistent) refusal to certify the applicant for admission is now based upon its assertion that his refusal "to answer said questions (concerning past or present membership in or affiliation with the Communist Party) has obstructed a proper and complete investigation of Applicant's qualifica-

¹⁴"A Plea For the Open Mind and Free Discussion" in "The Spirit of Liberty" Papers and Addresses of Learned Hand, edited by Irving Dillars, Vantage Books, 1959, page 210.

¹⁵It should be noted, of course that at no time did Konigsberg claim for himself the privilege of the Fifth Amendment, but, on Constitutional grounds, relied entirely on the First Amendment.

tion for admission to practise law in the State of California."

Can it be truly said that to have answered such question would have enabled the Committee to determine whether or not this applicant is a person who advocates the overthrow of the Government of the United States or the State of California by force, violence or other unconstitutional means? This Court has specifically found, after examining the entire record *including Konigsberg's refusal to answer these very questions*, that evidence which the State offered to prove that he advocated overthrow of the Government by force and violence, "To the contrary . . . manifests a strongly held conviction for our constitutional system of government."¹⁶ Indeed, this Court made an overall finding that there was no evidence in the record which "rationally justifies a finding that Konigsberg . . . failed to show that he did not advocate the forceful overthrow of the Government."

Can it be said that to have answered such question under such circumstances would have enabled the Committee to determine whether to certify, as apparently it now "is unable to certify" that Konigsberg "possesses the requisite qualifications" of good moral character to be entitled to practise law in California, when this Court has already found, in the face of the very same

¹⁶353 U. S. 252, 272. This Court also found that "certainly there is nothing in the newspaper editorials that Konigsberg wrote that tends to support a finding that he champions violent overthrow. Instead, *the editorials expressed hostility to such a doctrine.*" (Emphasis supplied.) The Court pointed out that Konigsberg had written: "It is vehemently asserted that advocacy of force and violence is a danger to the American government and that its proponents should be punished. With this I agree. Such advocacy is un-American and does undermine our democratic processes. Those who preach it must be punished."

refusal, that there was no evidence in the record which "rationally, justifies a finding that Konigsberg failed to establish his good moral character"¹⁷ Certainly there could be no greater indictment of the character of this or any other man than a willingness to sacrifice his principle in the interest of his immediate goal of admission to the Bar. Even one of the members of the Committee in the original hearing was impelled to say of applicant, "*I commend his moral principle, let me say, but perhaps have a little doubt for his judgment.*"¹⁷

Would an abandonment of his moral principle make Konigsberg a better, fitter man to be admitted to join our profession? Does the "noble tradition of the bar" of which Mr. Stimson spoke call for men ready to abandon their principle in the face of threat or does it call for men with the moral fibre to cling steadfastly to that principle, no matter what the personal sacrifice? "If I would but go to hell for an eternal moment or so, I could be knighted."¹⁸ Is this what is demanded for admission to the Bar?

We do not ask these questions in the spirit of academic philosophical abstraction. We ask them because we feel that they go to the very heart of the constitutional question involved here.

The Constitution is not merely a set of guiding "legal" rules according to which our institutions and our people may govern and be governed. It is, in truth, a great and solemn covenant among men which embodies deep moral principles. "Due process of law," "equal protection of the laws", "freedom of speech, of press, of religion, of thought"—these and other "hallowed phrases"

¹⁷353 U. S. 252, 300.

¹⁸Shakespeare—The Merrie Wives of Windsor.

which stem from the Bill of Rights are the expression of basic truths according to which men must live in relationship to one another in a society which recognizes the dignity, indeed the divinity, of individual man and defends it from the excesses of group-man, society. It is our recognition of the necessity for such individual freedoms as are embodied in our Constitution which permits man's spirit to flourish in a society like ours in contrast to those societies which deny such rights to the individual.

A perceptive statement of the late Professor Zachariah Chafee of Harvard Law School has recently come to our attention. It summed up in one short sentence the essence of the basic principle which underlies the Constitutional doctrines of which we speak. We cannot all speak with the assurance which Professor Chafee possessed, not only of family antecedents but of long established position. But we can agree that the statement he made to the Harvard Board of Overseers concerning the *Abrams* case¹⁹ was indeed "a wonderful avowal of faith"—"a concentrated expression of devotion without rhetoric".²⁰ Prof. Chafee said:

"I come of a family that have been in America from the beginning of time. My people have been business people for generations. My people have been people of substance. They have made money. My family is a family that has money. I believe in property and I believe in making money, but I want my crowd to fight fair."²¹

¹⁹ *Abrams*, 250 U. S. 616.

²⁰ "Felix Frankfurter Reminiscences," Reynal & Co., New York, 1960, page 177.

²¹ *Id.*

We need not be concerned here with the "far reaching and complex questions relating to freedom of speech press and assembly" which this Court felt it would have been compelled to decide if the Bar Committee had in the first instance "barred Konigsberg solely because of his refusal to respond to its inquiries into his political associations and his opinions about matters of public interest". The constitutional question *in limine* is whether this applicant has been denied the elementary fairness which constitutes due process and equal protection.

We, the signers of this brief, members of the California Bar, submit that Raphael Konigsberg, pursuant to the decision of this Court, is entitled to admission to the California Bar.

Respectfully submitted,

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IN THE

Supreme Court of the United States

1962-1963 Term

No. 28

Ex parte

Young

Writ of Certiorari to the Supreme Court of the State
of California

Board of American Civil Liberties Union of
Southern California for Leave to File Brief
Amicus Curiae and Brief

A. L. W.

1962-1963

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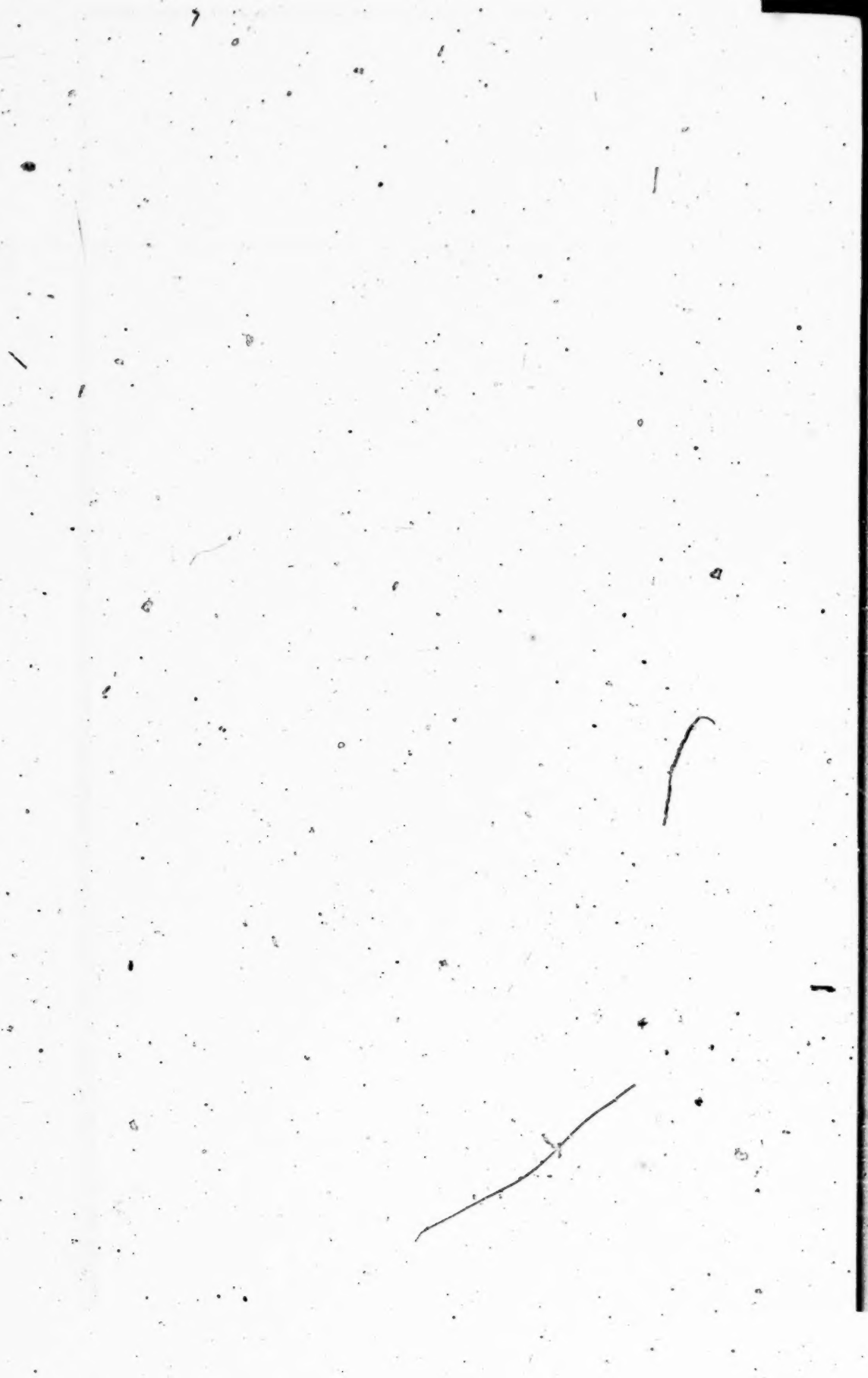
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

No. 28

RAPHAEL KONIGSBERG,

Petitioner,

v.s.

THE STATE BAR OF CALIFORNIA and the COMMITTEE
OF BAR EXAMINERS OF THE STATE BAR OF CALI-
FORNIA.

**MOTION FOR LEAVE TO FILE BRIEF
AMICUS CURIAE.**

The American Civil Liberties Union of Southern California respectfully requests permission to file the within Brief Amicus Curiae in support of petitioner's position in the above entitled cause.

Counsel for applicant have read the record at bar and have familiarized themselves with the arguments presented by the parties hereto.

This applicant is devoted to the protection and support of the civil liberties and rights of all persons, irrespective of their politics, status, origin or of the nature of the crime charged. The Union believes that the free exchange of ideas, the freedom to express them

and discuss them with others, is absolutely fundamental to a democracy. For government to penalize lawful speech, even indirectly, not only deprives society of new ideas, but sets us on a course paralleling the very ideologies which we oppose. Therefore, the A. C. L. U. believes free speech to be the most compelling societal interest unless and until uttered under circumstances which afford no reasonable time to reply.

Pursuant to leave of this Court, the undersigned filed herein an amicus brief in behalf of the American Civil Liberties Union in support of the Petition for Writ of Certiorari. The brief pointed out that, by standing upon petitioner's refusal to disclose his associations, rather than upon the record as a whole, California had chosen an unfair method of disqualifying Konigsberg from the practice of law.

The American Civil Liberties Union believes, however, that a more fundamental issue posed by this case—and which is a point only touched on in petitioner's opening brief—lies in where the line is to be drawn between individual freedom and State action.

It cannot be earnestly disputed that the questions which petitioner refused to answer intruded on his privacy. This fundamental right, while recognized by this Court in *N. A. A. C. P. v. Alabama*, 357 U. S. 451 and *Talley v. California*, 362 U. S. 60, was denied protection in *Lerner v. Casey*, 357 U. S. 468, *Beilan v. Board of Education*, 357 U. S. 399 and *Barenblatt v. United States*, 360 U. S. 128. The decisive point of

departure between these cases is left in doubt chiefly because this Court has attempted to define the limits of the societal interest on a case-by-case basis.

This policy, as the decision of the California Supreme Court in the instant case reflects, has caused considerable confusion and misunderstanding as to the limitations on the police power in relation to constitutionally protected speech.

Moreover, the emphasis given in the *Barenblatt—Lerner*—and *Beilan* cases to societal interests, particularly when invoked by inquisitorial bodies, has been largely at the expense of civil liberties. This constitutional philosophy ignores the basic reality that societal rights in a democracy are co-extensive with individual rights. But what is far more serious in the "balance-of-interests" approach, because it is subjective, is that it invites legislative and judicial restraints upon speech—even "while this Court sits."

Because California's judiciary and Bar have construed this Court's decisions so as to transgress upon petitioner's privacy, and because there is a need to discuss the constitutional policies and rationale which appear to have given rise to such transgression, the American Civil Liberties Union respectfully requests leave to file the within brief in support of petitioner's position.

Respondents have not consented to the filing of the attached brief but their counsel have advised counsel for the applicant that they will not object to the filing.

reserving the right to reply if they deem such to be indicated.

Respectfully submitted,

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IN THE
Supreme Court of the United States

October Term 1960

No. 28

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and the COMMITTEE
OF BAR EXAMINERS OF THE STATE BAR OF CALI-
FORNIA.

**BRIEF OF AMERICAN CIVIL LIBERTIES
UNION OF SOUTHERN CALIFORNIA,
AMICUS CURIAE.**

The Decision by the Court Below Deprives Petitioner of Freedom of Speech and Due Process Rights.

California has denied petitioner a license to practice law solely because of his refusal to disclose whether or not he had ever belonged to the Communist Party.

Recently, this Court held that a municipality could not arbitrarily compel a citizen to put his name to every idea he espoused or distributed (*Talley v. California*, 362 U. S. 60). And earlier, this Court, acknowledging the "close nexus" existing between free speech and the privacy of one's opinions, denied that Alabama could

compel a private association to disclose the names and addresses of its members (*N. A. A. C. P. v. Alabama*, 357 U. S. 451, 460; see also: *Bates v. Little Rock*, 361 U. S. 516).

Therefore, it cannot be seriously denied that California here abridged petitioner's freedom of speech and assembly, as well as the right of others to hear and discuss his ideas (See: *Dennis v. United States*, 341 U. S. 494; *Vates v. United States*, 354 U. S. 298). Hence, the crucial issue posed by this case—as by other speech cases—is whether the State may circumscribe speech protected by The First Amendment. In putting the issue thusly, we are mindful of this Court's opinions in *Lerner v. Casey*, 357 U. S. 468 and *Beilan v. Board of Education*, 357 U. S. 399; on which the California Supreme Court leaned so heavily in this case (52 Cal. 2d 769, 773). Those decisions appear to uphold the right of a state—as an employer—to discharge, under a theory of incompetency or lack of candor, a public employee who fails or refuses to disclose, upon demand, past or present membership in the Communist Party. While the *Lerner* and *Beilan* cases obviously do not control the case at bar, the rationale upon which they are based, is corroding The First Amendment, even as it has here misled the California Supreme Court and the State Bar.

To compel disclosure of beliefs and associations by economic pressure differs not too much from extracting them by the rack and screw. If the one method be more "civilized," it is not the less offensive to a democratic society. For it is the *threat* of ruin or adversity more than the punishment itself that induces silence and conformity.

That freedom is not absolute is a mere truism which should not be invoked to justify procedures which deprive The First Amendment of meaning. The objective of a democratic society is to encourage freedom rather than to treat it as a menace, or entrust it only to those willing to submit a daily accounting of their political activities.

The test is not, as declared in the *Lerner, Beilan* cases, whether State intrusion on liberty is rational, or that it comes "encased in the armor" of a more compelling societal interest. It is not for the Courts or legislatures to decide which ideas will save democracy, and which will destroy it. That judgment is reserved exclusively for the forum of public opinion.

California's interest in protecting the integrity of its judicial processes, however laudable, rational or important, cannot be said to supersede the national interest in safeguarding the channels of communication and promoting the free exchange of ideas. Indeed, it is to such a premise that democracy is anchored.

Moreover, the "balance-of-interest" test provides no reasonable notice either to the State or to the citizen as to the limits of constitutionally protected dissent. The boundaries of liberty cannot be left to legislative experimentation, conceived in an "atmosphere of cold war and hot emotions." Nor should the citizen be expected or required to prophesy which opinions or associations he may safely indulge in without risking his reputation or his job.

The freedom to exchange ideas presupposes, of course, the opportunity to do so. Government can, and must, preserve that opportunity. A substantial and imminent threat thereto justifies state intervention. Not,

however, just a "remote or shadowy threat" (concurring opinion, *Sweezy v. New Hampshire*, 354 U. S. 234, at p. 265), but a danger which manifestly precludes a reasonable opportunity for effective debate.

This does not deprive California of the right to punish a call to unlawful action by methods which afford the accused due process of law. The point is, however, that neither those facts, nor those methods for ascertaining them are to be found in this record.

It is not, that the "clear and present danger" test is novel or unique—for of course, it is not; but rather that the times in which we live are thought by some to require a restraint in its application, if not its outright modification.

It is fair to consider whether political conditions as they existed in 1793 appeared less ominous to those who adopted The First Amendment without inserting qualifications to govern its operation.

But even if it be true that Communism and modern weaponry have, as never before, brought civilization to the brink of catastrophe, we cannot believe that the rational and purpose of The First Amendment has become less valid. Surely, in times of world tension our national security lies not in emulating the error of despotic government, but in providing a favorable climate for new ideas and reasonable minds in which to fertilize them. The existence of heretical ideologies does not warrant the exchange of humanitarian principles for hollow platitudes. Freedom is a way of life, not just a civics lesson. Certainly there are risks in preserving it in the form envisioned by our Constitutional forefathers. But these are risks which they chose out of their fierce belief in human dignity; and because experi-

ence had taught them that such risks were infinitely preferable to securing government against the governed.

We cannot suppress the advocacy of dissident doctrines without acknowledging that freedom is impractical when heresay lurks. But when does it not? Must we endure modified versions of freedom—or none at all—until the historic struggle between totalitarianism and humanism has ceased? Is liberty invariably the slave of perilous times—or its hope? The answers, we respectfully submit, will not await a factual analysis of the cases which come to this Court, but rather must be found in the tenets and history of the Bill of Rights.

Only rarely are civil liberties attacked these days by frontal assault. States have learned more modern techniques for suppressing unorthodox opinions, such as by arousing public antipathy toward their adherents. Yet, it is precisely at that point that The First Amendment fulfills its pledge. For freedom of speech does not mean the right to talk to one's self, nor can it be effectively exercised if the advocate is circumscribed by a cordon of economic sanctions. As this Court observed in *N. A. A. C. P. v. Alabama*, *supra*, at p. 460:

"Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association."

Obviously, the right to dissent is illusory if the dissenter must expose himself and others to reprisal and vilifications. Hence, the freedom to discuss ideas with others carries with it the right to be silent about such matters (*N. A. A. C. P. v. Alabama*, *supra*; *Talley v. California*, 362 U. S. 60; *Bates v. Little Rock*, 361 U. S. 516).

It follows that the State's interest in one's associations does not become compelling in the absence of evidence that he has engaged in conduct requiring an explanation.

Yet—even without such evidence—the majority opinions in the *Lerner* and *Beilan* cases seem to have found the interest of the State *qua* employer more compelling than the employee's privacy, thereby leaving the impression that a public employee owes a greater duty of candor to his employer than a citizen owes to his government (Compare *Speiser v. Randall*, 357 U. S. 513; *N. A. A. C. P. v. Alabama*, 357 U. S. 451). To intimate that the liberties enjoyed by a citizen become somehow a threat to the security of the State when invoked by him as its servant defies understanding. If the State cannot relieve itself of the burden of confronting a taxpayer with evidence of unlawful speech (*Speiser v. Randall*, *supra*), how can it do so merely because the latter is a public employee? If government cannot abridge the speech rights, even indirectly, of a veteran (*Speiser v. Randall*, *supra*), or of a passport applicant (*Kent v. Dulles*, 357 U. S. 116), or of an attorney (*Schwartz v. Board of Bar Examiners*, 353 U. S. 232), then how does it become possible for it to do so where the rights involved are those of a teacher or a municipal subway conductor? Is the information obtained by the State as employer unavailable to the State as prosecutor? Does the Constitution contain a reservation clause specifically exempting those in public service from its protection?

Either speech is lawful, or unlawful. If there is time to answer, if the advocacy falls short of incitement, it is lawful irrespective of whether the advocate

is in government's employ, or simply a citizen thereof. (*Vates v. United States*, 354 U. S. 298). If the speech is lawful, The First Amendment, subsumed in The Fourteenth, forbids its curtailment by State action. To hold that infringement of speech is contingent on the *occupation* or *status* of the advocate, rather than his *conduct*, not only deprives him of equal protection of the laws, but simply invites the State to exercise powers expressly withheld by The First Amendment.

It is difficult to comprehend how the police power can be exercised rationally if it is denied the State altogether. But to concede to the State the power to inquire into beliefs and associations does not help to explain how the exercise of such power—particularly on a record such as this—will afford the State any greater measure of security. It is unlikely that a faithless employee will be retained by government regardless of how he answers its questions. Moreover, he is still in a position as a lay citizen to subvert the State—if that is truly his objective.

In short, to seek security by means of loyalty oaths and inquisitions is an illusion—especially if such devices are not applied to everyone. The latter approach would at least have the virtue of consistency, even as it would obviate the troublesome pretense that security is possible in a free society.

However, oaths and inquisitorial bodies have been notoriously inefficient in preserving the heads and thrones of despots. It is unlikely, therefore, that such instruments will be any more effective in a democracy. They will, of course, encourage conformity and create an atmosphere of suspicion, mistrust and fear. And while this does serve the purposes of tyranny, it is an

anomaly in a society which professes to treat the individual with dignity and humanity—and where he is supposed to have a voice in the control of his destiny.

For these reasons, it is respectfully submitted that the *Lerner* and *Beilan* decisions should be reconsidered, thereby freeing public employees—and all other citizens—to pursue happiness along paths other than those illuminated by government.

In any event, notwithstanding the rationale or the holding in the *Lerner*—*Beilan* cases, the State nevertheless bears the burden of justifying its encroachment upon petitioner's liberty (*Bates v. Little Rock*, 361 U. S. 516, 524; see: concurring opinion in *Talley v. California*, 362 U. S. 60, at pp. 66-67). Obviously, the State has not borne that burden here.

Petitioner categorically denied that he had ever advocated the overthrow of government by force or violence, or that he was ever a knowing member of an organization that did [1960 R. 20-21; 28]. While there is the testimony of an ex-Communist to the effect that petitioner attended some Communist Party meetings in 1941, this Court noted of such evidence in the earlier *Konigsberg* case:

"Her testimony concerned events that occurred many years before and her identification of *Konigsberg* was not very convincing." (353 U. S. 252, 267).

Moreover, such testimony, standing alone, is not evidence that *Konigsberg* advocated the forceful overthrow of government (*Schwartz v. Board of Bar Examiners*, 353 U. S. 232; *Konigsberg v. State Bar*, *supra*; Compare: *DeJong v. Oregon*, 299 U. S. 353; *Fates v. United States*, 354 U. S. 298); and therefore is not a

sufficiently compelling interest to justify California's intrusion into petitioner's privacy (*Talley v. California*, 362 U. S. 60; *Bates v. Little Rock*, *supra*, N. A. A. C. P. v. *Alabama*, 357 U. S. 451).

The record, since its departure from this Court in 1957, is enhanced only by further testimonials to petitioner's good moral character, loyalty and integrity [1960 R. 11-14; 39-50]. Significantly, the State Bar's investigator could apparently produce no further evidence either of petitioner's affiliation with the Communist Party, or his espousal of unlawful doctrines [1960 R. 38].

Nevertheless, the State Bar contends that petitioner has frustrated its inquiry by refusing to disclose whether or not he was a member of the Communist Party. On this record, such disclosure would prove nothing.

Section 6064.1 of the Business and Professions Code bars admission only for preaching the overthrow of government by force or violence, not for mere membership in the Communist Party. Accordingly, membership or even active participation therein cannot be equated with, or justify an inference of advocacy of the doctrines denounced by Section 6064.1 (*Yates v. United States*, *supra*, at pp. 328-331).

There is no California statute or regulation which authorizes the State to withhold a license from a lawyer because the question goes unanswered. Furthermore, the record is devoid of evidence of conduct or speech such as might entitle the State to an explanation. Yet, California insists on one, even though failing to show a compelling interest therein. Accordingly, its refusal to admit petitioner to the California Bar is arbitrary and a denial of due process of law.

Conclusion.

The decision of the California Supreme Court should be reversed with directions to admit petitioner to the State Bar.

Respectfully submitted,

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1960.

No. 28

RAPHAEL KONIGSBERG,

Petitioner,

vs.

STATE BAR OF CALIFORNIA AND THE COMMITTEE OF
BAR EXAMINERS OF THE STATE OF CALIFORNIA.

PETITIONER'S REPLY BRIEF.

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I.

Introduction.

Respondent has completely failed to come to grips with the basic facts of this case. In essence respondent treats this case as though it had not already once been decided by this Court. Only by ignoring the history of the case and the true factual situation which presents itself could respondent fail to recognize the fundamental denial of due process which petitioner has suffered at the hands of the State of California.

Respondent overlooks petitioner's long record of high repute attested by more than fifty prominent citizens of the Los Angeles community. Respondent overlooks

the findings of this Court that petitioner had met his burden of proof that he was a person of good moral character and the finding that no credible evidence could support an inference that he advocated the overthrow of the government by force and violence. Respondent fails to even note that the present record in every material aspect is identical with the record before the Court in the 1956 term.

Since respondent has failed to meet the basic problems as set forth in petitioner's brief, petitioner will confine his response in this brief to meeting individual arguments raised in the reply even though in petitioner's view the entire argument of respondent is predicated on a faulty analysis of the record. The points raised by respondent will, therefore, be taken up in this reply as presented, without endeavoring to reiterate in any detail the statement of position set forth in petitioner's Opening Brief.

II.

Petitioner's Response,

A. The Questions as Presented by Respondent Incorrectly Pose the Issues of This Case.

The First Question* is framed by respondent in broad terms but those terms do not necessarily apply to this case. This question, as formulated need not be determined by this Court in order to resolve the basic issues of this case. Respondent seeks to have this Court validate a principle requiring an applicant for admission

*"1. Is the denial by the California Supreme Court of the petitioner's application for admission to the Bar on the Ground that he refused to disclose his relationship with the Communist Party in the present and recent past consistent with the decision of this Court in *Konigsberg v. State Bar*, 353 U. S. 252?"

to the Bar to respond to questions relating to possible Communist Party affiliation under all circumstances and without regard to other factors which appear in the record. No such broad decision is required by the record at bar wherein petitioner has established beyond any doubt his good moral character and has shown by his statements, the evidence of other persons, and his writings at a time too early to be self serving that he does not advocate the overthrow of the government by force and violence. On this record, then, this Court can hold it would be a denial of due process to require *this* petitioner to answer *these* questions asked in the manner and at the time that the questions were asked. Therefore, the posing of the question in the broad and general terms chosen by respondent places an unnecessary burden upon this Court for the purposes of this case.

Similarly the second question* presented by respondent begs the real question. This question assumes that California law existed before petitioner entered law school requiring the answering of the questions at issue in this case. It should be noted, however, that this case was before this Court in its October Term 1956, and the same respondent failed to call to the attention of the Court any such law, case, or Committee rule at that time and in the present brief the only authority cited is the decision of the Court below in this self-same case.

It is submitted that to thus lay claim to a "long standing rule of California Law" is sheer sophistry.

*2. Does the denial by the California Supreme Court of the petitioner's application for admission to the Bar on the basis of California law in existence before the petitioner entered law school raise any constitutional issue independent of those presented by the substance of the law applied?²⁴

The third question*, presented by respondent assumes that the "adequate warning" to which this Court alluded in its prior decision was intended to apply to the across-the-table statements of the Committee chairman relied upon by respondent in this record, rather than a rule of stature.

Finally the manner in which the fourth question** is presented to this Court indicates by its very phrasing that the respondent is in reality drawing unfavorable inferences about petitioner from his failure to answer the question; not merely barring his admission to practice law because his failure to answer an allegedly relevant question "obstructed" its inquiry into his morality and advocacy.

B. Respondent's Restatement of the Applicable Constitutional and Statutory Provisions Emphasizes the Denial of Due Process to This Petitioner.

Respondent's setting forth of the pertinent provisions of California Law draws attention to the fundamental fact that petitioner here has complied with every one of the requirements of California Law and reaffirms that the refusal of the State of California to admit petitioner to the Bar denies him due process of law.

For example, Section 6060 of the Business and Professions Code of the State of California as set forth by

*"3. Was the petitioner given adequate warning by the Committee investigating his fitness to practice law that his continued refusal to disclose his relationship with the Communist Party in the present and the recent past would result in the denial of his application for admission to the bar?"

**"4. Does the denial by the California Supreme Court of the petitioner's application for admission to the Bar on the ground that he refused to disclose his relationship with the Communist Party in the present and the recent past deny any of the petitioner's constitutional rights?"

the respondent establishes four basic conditions. There is no assertion any where in Respondent's Brief that petitioner has failed in any particular to comply with these provisions. Nowhere in Respondent's Brief is there a suggestion that petitioner is not of good moral character and in view of the finding of this Court on an identical record in *Konigsberg v. State Bar*, 353 U. S. 252, no such assertion could be made in good faith by respondent.

Similarly, with reference to Section 6064.1 of the Business and Professions Code of the State of California the record remains devoid of evidence indicating that petitioner advocates overthrow of the Government by force and violence or other unconstitutional means. Again on this point the record stands on all fours with the record before this Court when it held that petitioner was worthy of admission.

One then examines in vain the remainder of the cited statutory provisions to find any authority for the position that petitioner is not duly qualified to be a member of the Bar of the State of California. One notes that Section 6047 of the California Business and Professions Code specifically empowers the Committee of Bar Examiners, subject to the approval of the State Bar's Board of Governors, to adopt such "reasonable rules and regulations" as may be necessary from time to time. While petitioner believes that a rule that bars from admission under all circumstances a person who fails or declines to answer a question which the Committee deems to be relevant would be open to grave constitutional doubt, nevertheless on the facts of this case no such rule had ever been enacted or adopted by the legislature, the courts or the organized Bar of the State.

of California. This Court, therefore, is not faced with the difficult constitutional questions to which it referred in the *Konigsberg* decision.*

C. Respondent's Statement of Facts Does Not Adequately Present the Posture of This Case.

The Statement of Facts presented by respondent, containing primarily quotations from the Chairman of the Committee of Bar Examiners and petitioner, fails to give the entire picture, and in some cases the statements, taken by respondent out of context, fail to fully disclose the principled position upon which the petitioner has rested at all times.

Petitioner has carefully reviewed the facts in his Opening Statement and these facts need not be repeated again here except to point out that petitioner at no time obstructed the investigation of respondent, even assuming for purposes of this discussion that the nature of the investigation was a proper one. The mere fact that the Chairman of the Committee states on the record that the committee's function would be frustrated does not establish this as a fact. It should be noted that in the middle of page 7 of Respondent's Brief, the Chairman of the Committee is quoted as stating that "... investigation can be carried out in a number of ways." (Emphasis supplied.) By the same token, petitioner responded in a number of ways to the requests of the Committee for information. He answered in as honest and straight-

*And even if such a rule or regulation or law had been adopted subsequent to the decision in *Konigsberg v. State Bar*, 353 U. S. 252, it obviously could not be applied in an *ex post facto* manner to *Konigsberg*. The only issue that would remain at that time would be whether such a rule, regulation or law could be constitutional as to subsequent applicants for the Bar who were properly warned of its existence.

forward a manner as any witness could possibly answer to all of the questions of the Committee save the remote few which fell within the restrictions of his conscience.

Petitioner does not challenge the individual integrity of the members of the Committee of Bar Examiners but it is manifest from the record that their collective objective was to find a technical means to nullify the effect of the decision of this Court in *Konigsberg v. State Bar*. Had their objective been obtaining information about petitioner, a "number of" channels were open to the committee which would not have encroached upon the obvious and thoroughly articulated scruples of conscience which prevented the petitioner from responding to this single question.

The Committee had names of more than fifty persons* given it by petitioner of whom it could have inquired regarding his activities and character. It may be assumed that such inquiries were made, because the Committee conceded that it had an investigator looking into the background of this petitioner. These witnesses could have been subpoenaed and required to testify concerning petitioner and their knowledge of him, but none was called. If the Committee was not sufficiently interested in the truth to do this, it could at least have cross-examined the witness produced in person by petitioner. But the Committee chose to excuse that witness without further inquiry. The admitted availability of other channels of information clearly indicates that the frustration or obstruction argument is a specious one which at least on the record of this case cannot be utilized without becoming a denial of due process of law to the petitioner.

*See 1956 Record 287-334; 1960 Record 39-50.

Again in the footnote on page 9, the respondent suggests that petitioner's statement that he never advocated the overthrow of the Government or belonged to an organization that advocated the overthrow of the Government is "unsupported." One is impelled to question why, with no contrary evidence in the record, the statement should require any support. But beyond that, respondents suggestion overlooks the fact that one of the newspaper articles offered by the respondent at the first series of hearings was an article in which petitioner clearly, forthrightly and without hesitation, and at a time when the issues of this case had not yet arisen, spoke out strongly against any doctrine of advocacy of overthrow of the Government by force and violence, or any other utilization of unconstitutional means.*

The argument advanced at the bottom of page 10 and top of page 11 of Respondent's Brief again shows a complete lack of understanding of the basic principles of petitioner's position here. Respondent endeavors to equate the refusal of some bar applicants to answer questions regarding specific criminal activities with petitioner's principled declination to respond to an invasion of the Constitutional protection of the First Amendment. Respondent's failure to understand this fundamental distinction is indicated later in Respondent's Brief wherein respondent cites cases (pp. 26-29) of lawyers denied admission to the Bar for fraudulent statements or affirmative failures to disclose proven past illegal activities. These cases, as will be pointed out, cannot be equated with the assertion by petitioner of his right to remain silent in a constitutionally protected area.

*1956 Record p. 95.

D. It Is No Answer to the Constitutional Issues of This Case to State That the Power to Avoid the Issues of This Case Are in the Hands of the Petitioner.

Respondent suggests at several points in its brief that "the power to remove this impediment to his qualifications always was and is now in the petitioner's hand." This, of course, begs the issues even as presented by respondent.

There has never been any doubt in petitioner's mind that if he were willing to stifle his conscience and if he were willing to waive his Constitutional rights he could and would secure his admission to the Bar of the State of California. Any citizen faced with an invasion of his rights can settle for expediency by waiving them; but it certainly need not be labored before this Court that if all citizens accepted this opportunistic position the virility of the Constitution and this nation would soon be sapped.

E. Petitioner Did Not "Misgauge the Effect of the Existing Law".

Respondent, in apparent disregard of this Court's statement that even in another case arising under other circumstances the right of an admittee to decline to answer questions of the type put to the petitioner would *raise grave Constitutional questions*, (353 U. S. 252, 261), suggests that there was some kind of a clear legislative mandate requiring petitioner to answer this specific question. Aside from brushing off the "difficult Constitutional questions" involved respondent misstates the law of California at the time that these hearings were held.

It has already been pointed out in prior briefs and in this brief that there was no law, rule or court decision substantiating the position advanced by respondent.

ent. In addition it is submitted that there was ample reason for petitioner in good faith to assume the contrary.

First of all, this Court stated that, "If and when a State makes a failure to answer a question an independent ground for exclusion from the Bar, then this court, as the case arises will have to determine whether the exclusion is Constitutionally permissible." (353 U. S. 252, 261.)

In addition, California courts had, in a case dealing with the legality of the Communist Party, determined only a few years before petitioner entered into the study of law that the Communist Party was a legal political party in the State of California and had erected no proscription or prohibition against membership. (See *Communist Party v. Peek*, 20 Cal. 2d 536.) Also, prior to the date of petitioner's 1957 hearing before the B-Committee, in a case arising in the United States District Court in the City of Los Angeles, this Court had held that even leadership of the Communist Party in California was not to be equated with advocacy of the overthrow of the Government of the United States by force and violence. (See *Yates v. United States*, 354 U. S. 298.)

Under these circumstances it certainly cannot be said that the petitioner was "indifferent" to the established status of the California Law as of the time of the hearing with which we are concerned in this case. To suggest that the petitioner was "boldly defiant" in this context is to ignore the record. Certainly there is a vast difference between "bold defiance" and determined and reasoned adherence to principles of conscience and constitution.

F. Reliance on the First Amendment Cannot Be Analogized to Refusal to Answer Questions Regarding Criminal Actions.

Respondent endeavors to establish an absolute rule requiring an applicant to answer all questions which it holds to be relevant under all circumstances and without regard to the state of the record. Such a rule would be arbitrary and capricious.

Petitioner would not quarrel with a rule making refusal to answer questions regarding the commission of specific crimes about which evidence is before the committee under most circumstances basis for refusing to certify the applicant for admission to the Bar. By the same token petitioner would assume that respondent must agree that questioning an applicant for admission about his religious affiliations, or how he voted in an election, or his national origin would be improper and to deny an applicant admission for his refusal to respond to such questions would deny him due process.

If then we conclude that the kind of absolute rule apparently argued for by respondent cannot constitutionally exist, then the record must be examined to determine whether the unanswered question in this case falls in the area of criminal activities or in the area controlled by the Bill of Rights. The question, first of all, did not concern commission of a specific crime. Membership as such in the Communist party as such has not been proscribed in California nor by Congress. (Cf. 50 U.S.C.A. 783(f).)

Secondly, petitioners position has never been one of a declination to answer because of a fear of self-incrimination. On the contrary it has always been one of refusal to be coerced into an abridgement of the First

Amendment. Third, he has presented an overwhelming record establishing his good moral character and non-advocacy of violent overthrow. On balance, one can not find, quite unlike the inquiry into specific criminal acts, any importance to the State in requiring the answering of the questions sought for here. We must then conclude that under the facts of this case the questions asked fall within a privileged area and this denial of admission to the Bar is a denial of due process to this petitioner.

G. Petitioner Seeks to Strengthen Rather Than Weaken the Integrity and the Moral Fiber of the Law.

Respondent suggests on page 16 that the State has an equally vital concern in the integrity of members of the Bar as in the integrity of school teachers and subway conductors. With this statement petitioner has no quarrel. But this agreement does not advance the respondent's position, for we must immediately ask who has challenged the integrity of the petitioner herein and in what way has this integrity been challenged? The record establishes the good moral character of the petitioner and this Court has so found. Only by drawing inferences of misconduct from petitioner's invocation of constitutional right can respondent challenge his "integrity." But this Court has said that such inferences drawn from a substantially identical record are arbitrary and capricious. The respondent's demand that petitioner answer the questions which in good conscience he has said he cannot answer is designed to destroy his moral fiber rather than to maintain the moral fiber of the legal profession.

He The Respondent Assumes the Basic Fact at Issue in Relying on the Very Decision of the Supreme Court of California Which Is Here in Question as Proof of Prior Existing California Law.

In the footnote on page 22, respondent refers to Rule X, Section 101 of the Rules Regulating Admission to the Practice of Law in California; this Section places the burden of proof for establishing good moral character on the applicant. But respondent seeks to place a further burden upon petitioner relating to Section 6064.1 of the California Business and Professions Code—the advocacy of force and violence section—which is in no wise covered by Rule X, Section 101. While a bar candidate was required to prove his moral fitness, no rule prior to the opinion of the California Supreme Court in this case below ever required him to prove the negative—his non-advocacy of force and violence*. Proof of advocacy of force and violence in this case is a burden which must be assumed and met by respondent and not the negative thereof by petitioner. And at this point we must not forget that the record discloses a staggering amount of evidence showing petitioner's non-advocacy, without any evidence to the contrary.

Nevertheless, the respondent asserts, that the decision of the California Supreme Court *in this case* is in some manner proof of the existence of prior law in California, requiring the answering of all questions by petitioner. It is submitted, however that this is as spurious as an argument that because a legislature is aware of the existence of the Constitution, it could not pass an unconstitutional statute.

*See *Speiser v. Randall*, 357 U.S. 513.

Whether or not petitioner has been accorded due process of law in the decision of the Supreme Court of California is the ultimate decision which this Court must determine. To say that this has been determined by the very decision below is of course a specious attempt to foreclose this Court's examination of the cause.

Again on page 24, the respondent refers to the Rules and Regulations of the Committee of Bar Examiners and the fact that the Committee was authorized to adopt such rules and regulations as might be necessary or advisable. As has already been indicated the committee had that power, subject to approval of the Board of Governors; but neither prior to the first decision of this Court nor subsequent has the Committee of Bar Examiners seen fit to enact a rule covering the position which it now asserts before this Court.*

I. The Prior Decisions of California Courts Are Inapplicable to the Present Case.

- Respondent cites a number of prior California cases as authority for the principle that "refusal to answer pertinent questions posed by the Committee" is ground for denial of admission to the Bar.

Even a cursory examination of the cases cited shows their inapplicability.

Respondent seeks to equate a *false* oath or the *proven* concealment of prior disbarment proceedings and *false* statements to the Committee with the petitioner's highly principled declination to respond to questions *previlged*

*Petitioner seriously questions whether such a rule could be framed in terms consistent with the Constitution, but certainly the inability to frame such a rule Constitutionally does not justify the application of the same proposition in an unconstitutional manner without framing a formal rule.

within the purview of the First Amendment. One looks in vain at the briefs filed by the respondent herein to find any reference to a single California case in which a California court has stated that the refusal to answer questions of a political nature or questions falling within the purview of the First Amendment can provide a basis for denial of admission to the Bar. Until such a case can be produced (and no such case exists), respondent cannot rely on precedent within the California Law for its position in this case.

**J. The Breadth of the Rule Sought by Respondent
Violates Due Process of Law.**

Respondent refers to Rule VII of the Committee of Bar Examiners and again equates questions relating to age, address, citizenship, occupation, legal character, and legal education, to questions falling within the freedom of speech protection of the First Amendment.

Respondent protests its concern and interest in the protection of constitutional liberties but then proceeds immediately to analogize association with Mafia, or a criminal group conspiring to rob a bank, with questions relating to membership in the Communist Party. There can be no question that when respondent uses the term "Mafia" it intends it in its most scurrilous connotation in order to set up the straw man which it thereafter seeks to strike down. Accepting for purposes of this argument that there are no acceptable and legal activities of the Mafia and that all of its activities are of an illegal nature and that membership in the Mafia requires participation in illegal activities then one could not quarrel with respondent's position that question about membership in the Mafia must be answered. But too many decisions of this Court (see *Wieman v. Up-*

degraff, 344 U. S. 183; *Schwartz v. New Mexico*, 353 U. S. 232; *Yates v. United States*, *supra*, 354 U. S. 298; *Schneiderman v. United States*, 320 U. S. 118). have indicated that Communist Party membership can be legal and noncriminal and that there must be proved participation in the claimed illegal activities on the part of a member before penalties may befall him to make this a proper equating of terms. At this point, in order to maintain the purported relevancy of its questions and to destroy the privilege involved in this case, respondent must draw improper inferences and equate membership in the Communist Party with the Mafia. In order to do this the respondent must, as it apparently does in this section, drop the pretense that petitioner has been denied admission to the Bar solely for his refusal to answer relevant questions and accept its position for what it really is—that petitioner is being barred because respondent improperly draws inferences of membership in the Communist Party and participation in and advocacy of overthrow of the Government by force and violence from petitioner's refusal to answer. This Court in the previous *Konigsberg* case held that such inferences were improper.

K. The Prior Decisions of This Court Do Not Justify The Respondent's Position.

In the final section, respondent seeks to rely on the *Beilan**, *Lerner*** and *Barenblatt**** decisions as justification for its position.

As already pointed out in petitioner's Opening Brief, and which will not be repeated in any detail here, there

**Beilan v. Board of Education*, 357 U. S. 398.

***Lerner v. Casey*, 357 U. S. 468.

****Barenblatt v. United States*, 360 U. S. 109.

are striking and cogent differences between the actual situations in these cases and the instant case. These are summarized under the general statement that the *Beilan* and *Lerner* cases involved public employees and did not involve an applicant for admission to the independent practice of the law. More than that, the *Beilan* and *Lerner* cases were situations where the State Court was able on the basis of prior decisions to equate refusal to answer the questions with lack of candor and/or incompetency. *Barenblatt*, on the other hand, dealt basically with whether the organic act of the House un-American Activities Committee sufficiently and specifically delineated its authority that a prosecution for contempt of Congress could follow a refusal to answer its questions.

In the *Konigsberg* case, the issue cannot be reduced down to the matter of candor since we are concerned with moral character and advocacy of force and violence. We must look at the entire record to see whether there is any challenge to the moral character of the petitioner or any reasonable grounds to believe he advocates force and violence and must immediately conclude that his character stands and remains impeccable.

Respondent here moves quickly and deftly from the failure to answer questions into issues of loyalty and "frustration" but neither of these arguments can provide a proper basis for denial on this record. We have here a bar applicant who had disclosed all that the respondent sought, bared his soul to the respondent on every question but the one, and exposed his entire life as a lead to other sources of information. The Committee has itself had investigators looking into his background and character. When one adds the totality of the rec-

ord in this case, one can only conclude that the mere refusal on high moral principles to respond to the single question cannot be deemed as any reflection on the moral character nor can it be deemed to be a lack of candor. Under these circumstances the holdings of the *Beilan* and *Lerner* cases can not be considered as applicable to the situation before the court. For here the societal balance must be found to favor the petitioner.

Similarly, with reference to the *Barenblatt* case, the relevancy and importance of an answer to the Communist party membership question when asked by a legislative committee whose function it is to investigate the administration of existing "subversive control" legislation and the need for new legislation as to which *Barenblatt* might have had information, is far different from the relevancy and importance of the same question asked of petitioner, where the bar committee's sole function is to determine whether he personally advocates force and violence and he has produced overwhelming evidence that he does not while no evidence at all indicates that he does.

III.

Conclusion.

Respondent agrees with petitioner that there is a need for a free, independent and fearless bar. Petitioner agrees with respondent that members of the Bar should be of the highest possible integrity and that the State has the responsibility to maintain the highest educational standard. On all of these factors there is no dispute between the parties.

Petitioner has presented an overwhelming record establishing his good moral character; he has also established beyond any doubt that he does not advocate overthrow of the Government by force and violence or any other unconstitutional means, although the burden on this point would seem the respondent's. Petitioner has answered every question but the one and has given to respondent every possible lead for further investigation. Respondent has carried on such an investigation and found no single flaw in the character of the petitioner.

This Court has found that petitioner has sustained the burden of proof that he has a good moral character. This Court has found that nothing in the record shows that he advocates overthrow of the Government by force and violence. The new record before the Court in this proceeding has not changed that showing.

Without regard to what ruling might be followed in another case under other circumstances and at another time, it seems clear that here the actions of the Committee of Bar Examiners of the State of California are inconsistent with fair play and due process. It is urged that this Court can now properly make an order that this petitioner be admitted to the Bar of the State of California.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 28.—OCTOBER TERM, 1960.

Raphael Konigsberg, Petitioner.

v.

State Bar of California and the
Committee of Bar Examiners
of the State of California.

On Writ of Certiorari
to the Supreme Court
of the State of Cali-
fornia.

[April 24, 1961.]

MR. JUSTICE HARLAN delivered the opinion of the Court.

This case, involving California's second rejection of petitioner's application for admission to the state bar, is a sequel to *Konigsberg v. State Bar*, 353 U. S. 232, in which this Court reversed the State's initial refusal of his application.

Under California law the State Supreme Court may admit to the practice of law any applicant whose qualifications have been certified to it by the California Committee of Bar Examiners. Cal. Bus. & Prof. Code § 6064. To qualify for certification an applicant must, among other things, be of "good moral character," *id.*, § 6060 (c), and no person may be certified "who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means" *Id.*, § 6064.1. The Committee is empowered and required to ascertain the qualifications of all candidates. *Id.*, § 6046. Under rules prescribed by the Board of Governors of the State Bar, an applicant before the Committee has "the burden of proving that he is possessed of good moral character, of removing any and all reasonable suspicion of moral unfitness, and that he is entitled to the high regard and confidence of the public." *Id.*, Div. 3, c. 4, Rule X, § 101. Any applicant denied

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certification may have the Committee's action reviewed by the State Supreme Court. *Id.*, § 8066.

In 1953 petitioner, having successfully passed the California bar examinations, applied for certification for bar membership. The Committee, after interrogating Konigsberg and receiving considerable evidence as to his qualifications, declined to certify him on the ground that he had failed to meet the burden of proving his eligibility under the two statutory requirements relating to good moral character and nonadvocacy of violent overthrow. That determination centered largely around Konigsberg's repeated refusals to answer Committee questions as to his present or past membership in the Communist Party. The California Supreme Court denied review without opinion. See 52 Cal. 2d 769, 770.

On certiorari this Court, after reviewing the record, held the state determination to have been without rational support in the evidence and therefore offensive to the Due Process Clause of the Fourteenth Amendment. *Konigsberg v. State Bar, supra*. At the same time the Court declined to decide whether Konigsberg's refusals to answer could constitutionally afford "an independent ground for exclusion from the Bar," considering that such an issue was not before it. *Id.*, 259-262. The case was remanded to the State Supreme Court "for further proceedings not inconsistent with this opinion." *Id.*, 274.

On remand petitioner moved the California Supreme Court for immediate admission to the bar. The court vacated its previous order denying review and referred the matter to the Bar Committee for further considera-

Konigsberg rested his refusals, not on any claim of privilege against self-incrimination, but on the ground that such inquiries were beyond the purview of the Committee's authority, and infringed rights of free thought, association, and expression assured him under the State and Federal Constitutions. He affirmatively asserted, however, his disbelief in violent overthrow of government.

tion. At the ensuing Committee hearings Konigsberg introduced further evidence as to his good moral character (none of which was rebutted), reiterated unequivocally his disbelief in violent overthrow, and stated that he had never knowingly been a member of any organization which advocated such action. He persisted, however, in his refusals to answer any questions relating to his membership in the Communist Party. The Committee again declined to certify him, this time on the ground that his refusals to answer had obstructed a full investigation into his qualifications.² The California Supreme Court, by a divided vote, refused review, and also denied Konigsberg's motion for direct admission to practice. 52 Cal. 2d 769. We again brought the case here: 362 U. S. 910.

² The Committee made the following findings relevant to the issues now before us:

"(1) That the questions put to the applicant by the Committee concerning past or present membership in or affiliation with the Communist Party are material to a proper and complete investigation of his qualifications for admission to practice law in the State of California;

"(2) That the refusal of applicant to answer said questions has obstructed a proper and complete investigation of applicant's qualifications for admission to practice law in the State of California."

The essence of the state court's decision appears in the following extracts from its opinion:

"The committee action now before us contains no findings or conclusion that petitioner had failed to establish either his good moral character or his abstention from advocacy of overthrow of the government.

"Here it is the refusal to answer material questions which is the basis for denial of certification....

"[T]o admit applicants who refuse to answer the committee's questions upon these subjects would nullify the concededly valid legislative direction to the committee. Such a rule would effectively stifle committee inquiry upon issues legislatively declared to be relevant to that issue." *Id.*, at 772, 774, 344 P. 2d, at 779, 780.

Justice Traynor dissented on the ground that the California Supreme Court, not being required by statute to exclude bar applicants

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Petitioner's contentions in this Court in support of reversal of the California Supreme Court's order are reducible to three propositions: (1) the State's action was inconsistent with this Court's decision in the earlier *Konigsberg* case; (2) assuming the Committee's inquiries into *Konigsberg's* possible Communist Party membership were permissible, it was unconstitutionally arbitrary for the State to deny him admission because of his refusals to answer; and (3) in any event, *Konigsberg* was constitutionally justified in refusing to answer these questions.

I.

Consideration of petitioner's contentions as to the effect of this Court's decision in the former *Konigsberg* case requires that there be kept clearly in mind what is entailed in California's rule, comparable to that in many States, that an applicant for admission to the bar bears the burden of proof of "good moral character"—a

on the sole ground of their refusal to answer questions concerning possible advocacy of the overthrow of government, should not adopt such an exclusionary rule, at least where the Committee of Bar Examiners has not come forward with some evidence of advocacy. He declined to reach constitutional issues. Justice Peters dissented on federal constitutional grounds and in the belief that this Court's decision in the first *Konigsberg* case required immediate admission of the applicant. Chief Justice Gibson did not participate in the decision.

* All of the 50 States, as well as Puerto Rico and the District of Columbia, prescribe qualifications of moral character as preconditions for admission to the practice of law. See West Publishing Co., Rules for Admission to the Bar (35th ed. 1957); Survey of the Legal Profession, Bar Examinations and Requirements for Admission to the Bar (1952); Jackson, Character Requirements for Admission to the Bar, 20 Fordham L. Rev. 305 (1950); Annot., 64 A.L.R. 2d 301 (1959).

- The burden of demonstrating good moral character is regularly placed upon the bar applicant. *Ex parte Montgomery*, 249 Ala. 378, 31 So. 2d 85; *Ex parte Stephenson*, 243 Ala. 342, 10 So. 2d 4; *Appli-*

requirement whose validity is not, nor could well be, drawn in question here.⁵

Under such a rule an applicant must initially furnish enough evidence of good character to make a prima facie case. The examining Committee then has the opportunity to rebut that showing with evidence of bad character. Such evidence may result from the Committee's own independent investigation, from an applicant's responses to questions on his application form, or from Committee interrogation of the applicant himself. This interrogation may well be of decisive importance for, as all familiar with bar admission proceedings know, exclusion of unworthy candidates frequently depends upon the thoroughness of the Committee's questioning, revealing as it may infirmities in an otherwise satisfactory showing

cation of Courtney, 83 Ariz. 231, 319 P. 2d 991; Ark. Stat. Ann., 1947, §§ 25-101, 25-103; *Spears v. State Bar*, 211 Cal. 183, 294 P. 697; *O'Brien's Petition*, 79 Conn. 46, 63 A. 777; *In re Durant*, 80 Conn. 140, 147, 67 A. 497; Del. Sup. Ct. Rule 31 (1)(a), (2)(a); *Coleman v. Watts*, 81 So. 2d 650 (Fla.) (burden of proof on applicant; prima facie showing shifts burden of going forward to Examiners); *Gordon v. Chinkscales*, 215 Ga. 843, 114 S. E. 2d 15; *In re Latimer*, 11 Ill. 2d 327, 143 N. E. 2d 20 (semble); *Rosencrantz v. Tidlington*, 193 Ind. 472, 141 N. E. 58; *In re Meredith*, 272 S. W. 2d 456 (Ky.); *In re Meyerson*, 190 Md. 671, 59 A. 2d 489 (semble); *Matter of Keenan*, 313 Mass. 186, 47 N. E. 2d 12; *Application of Smith*, 220 Minn. 197, 19 N. W. 2d 324 (semble); *On Application for Attorney's License*, 21 N. J. L. 345; *Application of Cassidy*, 268 App. Div. 282, 51 N. Y. S. 2d 202, aff'd, 296 N. Y. 926, 73 N. E. 2d 41; *Application of Farmer*, 191 N. C. 235, 131 S. E. 661; *In re Weinstein*, 150 Ore. 1, 42 P. 2d 744; *State ex rel. Board v. Poyntz*, 152 Ore. 592, 52 P. 2d 1141 (burden of proof on applicant; prima facie showing shifts burden of going forward to Examiners); *In the Matter of Eary*, 134 W. Va. 204, 58 S. E. 2d 647 (semble).

⁵For reasons given later (pp. —, *infra*), we need not decide whether California's burden-of-proof rule could constitutionally be applied, as it was by the Committee after the first Konigsberg proceedings, to the requirement of nonadvocacy of violent overthrow.

on his part. This is especially so where a bar committee, as is not infrequently the case, has no means of conducting an independent investigation of its own into an applicant's qualifications. If at the conclusion of the proceedings the evidence of good character and that of bad character are found in even balance, the State may refuse admission to the applicant, just as in an ordinary suit a plaintiff may fail in his case because he has not met his burden of proof.

In the first *Konigsberg* case this Court was concerned solely with the question whether the balance between the favorable and unfavorable evidence as to Konigsberg's qualifications had been struck in accordance with the requirements of due process. It was there held, first, that Konigsberg had made out a prima facie case of good character and of nonadvocacy of violent overthrow, and, second, that the other evidence in the record could not, even with the aid of all reasonable inferences flowing therefrom, cast such doubts upon petitioner's prima facie case as to justify any finding other than that these two California qualification requirements had been satisfied.⁶ In assessing the significance of Konigsberg's refusal to answer questions as to Communist Party membership, the Court dealt only with the fact that this refusal could not provide any reasonable indication of a character not meeting these two standards for admission. The Court did not consider, but reserved for later decision, all questions as to the permissibility of the State treating Konigsberg's refusal to answer as a ground for exclusion, not because it was evidence from which substantive conclusions might be drawn, but because the refusal had thwarted a full investigation into his qualifications. See 353 U. S. 259-262. The State now asserts that ground for exclusion,

⁶ The Court assumed, but did not discuss, the constitutionality of California's burden-of-proof rule as applied to the nonadvocacy-of-forceful-overthrow requirement of the California statute.

an issue that is not foreclosed by anything in this Court's earlier opinion, which decided a quite different question.

It is equally clear that the State's ordering of the rehearing which led to petitioner's exclusion manifested no disrespect of the effect of the mandate in that case, which expressly left the matter open for further state proceedings "not inconsistent with" the Court's opinion. There is no basis for any suggestion that the State in so proceeding has adopted unusual or discriminatory procedures to avoid the normal consequences of this Court's earlier determination. In its earlier proceeding, the California Bar Committee may have found further investigation and questioning of petitioner unnecessary when, in its view, the applicant's prima facie case of qualifications had been sufficiently rebutted by evidence already in the record. While in its former opinion this Court held that the State could not constitutionally so conclude, it did not undertake to preclude the state agency from asking any questions or from conducting any investigation that it might have thought necessary had it known that the basis of its then decision would be overturned. In recalling Konigsberg for further testimony, the Committee did only what this Court has consistently held that federal administrative tribunals may do on remand after a reviewing court has set aside agency orders as unsupported by requisite findings of fact. *Federal Communications Comm'n v. Pottsville Broadcasting Co.*, 309 U. S. 134; *Fly v. Heilmeyer*, 309 U. S. 146.

In the absence of the slightest indication of any purpose on the part of the State to evade the Court's prior decision, principles of finality protecting the parties to this state litigation are, within broad limits of fundamental fairness, solely the concern of California law. Such limits are broad even in a criminal case, see *Bryan v. United States*, 338 U. S. 552; *Hoag v. New Jersey*, 356 U. S. 464;

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cf. *Palko v. Connecticut*, 302 U. S. 319, 328. In this instance they certainly have not been transgressed by the State merely taking further action in this essentially administrative type of proceeding.

II.

We think it clear that the Fourteenth Amendment's protection against arbitrary state action does not forbid a State from denying admission to a bar applicant so long as he refuses to provide unprivileged answers to questions having a substantial relevance to his qualifications. An investigation of this character, like a civil suit, requires procedural as well as substantive rules. It is surely not doubtful that a State could validly adopt an administrative rule analogous to Rule 37 (b) of the Federal Rules of Civil Procedure which provides that that refusal, after due warning, to answer relevant questions may result in "the matters regarding which the questions were asked" being considered for the purposes of the proceeding to be answered in a way unfavorable to the refusing party, or even that such refusal may result in "dismissing the action or proceeding" of the party asking affirmative relief.

The state procedural rule involved here is a less broad one, for all that California has in effect said is that in cases where, on matters material to an applicant's qualifications, there are gaps in the evidence presented by him which the agency charged with certification considers

Moreover, even if there could be debate as to whether this Court's prior decision prevented new hearings on matters that had already transpired at the time of the first state hearings, there can be no doubt that such decision did not prevent California from investigating petitioner's actions during the period subsequent to the first hearing. Therefore we would in any case be presented with the question of the constitutionality of the State refusing to admit petitioner to the practice of law because of his declining to answer whether he has been a member of the Communist Party since the termination of the first set of hearings.

should be filled in the appropriate exercise of its responsibilities, an applicant will not be admitted to practice unless and until he cooperates with the agency's efforts to fill those gaps. The fact that this rule finds its source in the supervisory powers of the California Supreme Court over admissions to the bar, rather than in legislation, is not constitutionally significant. *Nashville, C. & St. T. R. Co. v. Browning*, 310 U. S. 362. Nor in the absence of a showing of arbitrary or discriminatory application in a particular case, is it a matter of federal concern whether such a rule requires the rejection of all applicants refusing to answer material questions, or only in instances where the examining committee deems that a refusal has materially obstructed its investigation. Compare *Beilan v. Board of Education*, 357 U. S. 399, with *Nelson v. County of Los Angeles*, 362 U. S. 1.

In the context of the entire record of these proceedings, the application of the California rule in this instance cannot be said to be arbitrary or discriminatory. In the first *Konigsberg* case this Court held that neither the somewhat weak, but uncontradicted testimony, that petitioner had been a Communist Party member in 1941, nor his refusal to answer questions relating to Party membership, could rationally support any substantive adverse inferences as to petitioner's character qualifications. 353 U. S. 266-274. That was not to say, however, that these factors, singly or together, could not be regarded as leaving the investigatory record in sufficient uncertainty as constitutionally to permit application of the procedural rule which the State has now invoked, provided that *Konigsberg* had been first given due warning of the consequences of his continuing refusal to respond to the Committee's questions. Cf. 353 U. S., at 261.

* The transcript of the original hearings before the Committee has been made part of the record before us in the present case.

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It is no answer to say that petitioner has made out a prima facie case of qualifications, for this is precisely the posture of a proceeding in which the Committee's right to examine and cross-examine becomes significant. Assuming, as we do for the moment, that there is no privilege here to refuse to answer, petitioner could no more insist that his prima facie case makes improper further questioning of him than he could insist that such circumstance made improper the introduction of other forms of rebutting evidence.

We likewise regard as untenable petitioner's contentions that the questions as to Communist Party membership were made irrelevant either by the fact that bare, innocent membership is not a ground of disqualification or by petitioner's willingness to answer such ultimate questions as whether he himself believed in violent overthrow or knowingly belonged to an organization advocating violent overthrow. The Committee Chairman's answer to the former contention was entirely correct:

"If you answered the question, for example, that you had been a member of the Communist Party during some period since 1951 or that you were presently a member of the Communist Party, the Committee would then be in a position to ask you what acts you engaged in to carry out the functions and purposes of that party, what the aims and purposes of the party were, to your knowledge, and questions of that type. You see by failing to answer the initial question there certainly is no basis and no opportunity for us to investigate with respect to the other matters to which the initial question might very well be considered preliminary."

And the explanation given to petitioner's counsel by another Committee member as to why Konigsberg's testi-

mony about ultimate facts was not dispositive was also sound.

"Mr. Mosk, you realize that if Mr. Konigsberg had answered the question that he refused to answer, an entirely new area of investigation might be opened up, and this Committee might be able to ascertain from Mr. Konigsberg that perhaps he is now and for many years past has been an active member of the Communist Party, and from finding out who his associates were in that enterprise we might discover that he does advocate the overthrow of this government by force and violence. I am not saying that he would do that, but it is a possibility, and we don't have to take any witness' testimony as precluding us from trying to discover if he is telling the truth. That is the point."

Petitioner's further miscellaneous contentions that the State's exclusion of him was capricious are all also insubstantial.⁹

⁹ There is no basis for any intimation that the California Supreme Court fashioned a special procedural rule for the purposes of this particular case. The California Bar Committee has in the past declined to certify applicants who refused to answer pertinent questions. See Farley, (Secretary, Committee of Bar Examiners), Character Investigation of Applicants for Admission, 29 Cal. State Bar Journal, 454, 457, 466 (1954). No more does the State's action bear any of the hallmarks of a bill of attainder or of an *ex post facto* regulation, see *Cummings v. Missouri*, 4 Wall. 277; cf. *United States v. Lovett*, 328 U. S. 303, especially in light of the fact that petitioner was explicitly warned in advance of the consequences of his refusal to answer. See p. —, *infra*. Likewise, there is no room for attributing to the Committee a surreptitious purpose to exclude Konigsberg by the device of putting to him questions which it was known in advance he would not answer, and then justifying exclusion on the premise of his refusal to respond. So far as this record shows

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There remains the question as to whether Konigsberg was adequately warned of the consequences of his refusal to answer. At the outset of the renewed hearings the Chairman of the Committee stated:

"As a result of our two-fold purpose, [to investigate and reach determinations], particularly our function of investigation, we believe it will be necessary for you, Mr. Konigsberg, to answer our material questions or our investigation will be obstructed. We would not then as a result be able to certify you for admission."

After petitioner had refused to answer questions on Communist Party membership, the Chairman asked:

"Mr. Konigsberg, I think you will recall that I initially advised you a failure to answer our material questions would obstruct our investigation and result in our failure to certify you. With this in mind do you wish to answer any of the questions which you heretofore up to now have refused to answer?"

At the conclusion of the proceeding another Committee member stated:

"I would like to make this statement so that there will be no misunderstanding on the part of any court that may review this record in the future, that I feel that as a member of the Committee that the failure of Mr. Konigsberg to answer the question as to whether or not he is now a member of the Communist Party is an obstruction of the function of this Committee, not a frustration if that word has been used. I think it would be an obstruction. There are phases of his moral character that we haven't been

Konigsberg was excluded only because his refusal to answer had impeded the investigation of the Committee, a ground of rejection which it is still within his power to remove.

able to investigate simply because we have been stopped at this point, and I for one could not certify to the Supreme Court that he was a proper person to be admitted to practice law in this State until he answers the question about his Communist affiliation."

The record thus leaves no room for doubt on the score of "warning," and petitioner does not indeed contend to the contrary.

III.

Finally, petitioner argues that, in any event, he was privileged not to respond to questions dealing with Communist Party membership because they unconstitutionally impinged upon rights of free speech and association protected by the Fourteenth Amendment.

At the outset we reject the view that freedom of speech and association (*N. A. A. C. P. v. Alabama*, 357 U. S. 449, 460), as protected by the First and Fourteenth Amendments, are "absolutes," not only in the undoubted sense that where the constitutional protection exists it must prevail, but also in the sense that the scope of that protection must be gathered solely from a literal reading of the First Amendment.¹⁰ Throughout its history this Court

¹⁰ That view, which of course cannot be reconciled with the law relating to libel, slander, misrepresentation, obscenity, perjury, false advertising, solicitation of crime, complicity by encouragement, conspiracy, and the like, is said to be compelled by the fact that the commands of the First Amendment are stated in unqualified terms: "Congress shall make no law . . . abridging the freedom of speech; or of the press; or the right of the people peaceably to assemble . . ." But as Mr. Justice Holmes once said: "The provisions of the Constitution are not mathematical formulas having their essence in their form; they are organic living institutions transplanted from English soil. Their significance is vital not formal; it is to be gathered not simply by taking the words and a dictionary.

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has consistently recognized at least two ways in which constitutionally protected freedom of speech is narrower than an unlimited license to talk. On the one hand certain forms of speech, or speech in certain contexts, have been considered outside the scope of constitutional protection.¹¹ See, e. g., *Schenck v. United States*, 249 U. S. 47; *Chaplinsky v. New Hampshire*, 315 U. S. 568; *Dennis v. United States*, 341 U. S. 494; *Beauharnais v. Illinois*, 343 U. S. 250; *Yates v. United States*, 354 U. S. 298; *Roth v. United States*, 354 U. S. 476. On the other hand, general regulatory statutes, not intended to control the content of speech but incidentally limiting its unfettered exercise, have not been regarded as the type of law the First or Fourteenth Amendments forbade Congress or the States to pass, when they have been found justified by subordinating valid governmental interests, a prerequisite to constitutionality which has necessarily involved a weighing of the governmental interest in-

but by considering their origin and the line of their growth. *Gompers v. United States*, 233 U. S. 604, 610. In this connection also compare the equally unqualified command of the Second Amendment: "the right of the people to keep and bear arms shall not be infringed . . ." (Emphasis supplied.) And see *United States v. Miller*, 307 U. S. 174.

¹¹ That the First Amendment immunity for speech, press and assembly has to be reconciled with valid but conflicting governmental interests was clear to Holmes, J. ("I do not doubt for a moment that by the same reasoning that would justify punishing persuasion to murder, the United States constitutionally may punish speech that produces or is intended to produce a clear and imminent danger that it will bring about forthwith substantive evils that the United States constitutionally may seek to prevent." *Abrams v. United States*, 250 U. S. 616, 627; to Brandeis, J. ("But, although the rights of free speech and assembly are fundamental, they are not in their nature absolute," *Whitney v. California*, 274 U. S. 357, 373); and to Hughes, C.J. ("[T]he protection [of free speech] even as to previous restraint is not absolutely unlimited." *Near v. Minnesota*, 283 U. S. 697, 716.

involved. See, e. g., *Schneider v. State*, 308 U. S. 147, 161; *Cox v. New Hampshire*, 312 U. S. 569; *Prince v. Massachusetts*, 321 U. S. 158; *Kovács v. Cooper*, 336 U. S. 77; *American Communications Assn. v. Douds*, 339 U. S. 382; *Breard v. Alexandria*, 341 U. S. 622. It is in the latter class of cases that this Court has always placed rules compelling disclosure of prior association as an incident of the informed exercise of a valid governmental function. *Bates v. Little Rock*, 361 U. S. 516, 524. Whenever, in such a context, these constitutional protections are asserted against the exercise of valid governmental powers a reconciliation must be effected, and that perforce requires an appropriate weighing of the respective interests involved. *Watkins v. United States*, 354 U. S. 178, 198; *N. A. A. C. P. v. Alabama*, *supra*; *Barenblatt v. United States*, 360 U. S. 109, 126-127; *Bates v. Little Rock*, *supra*; *Wilkinson v. United States*, 365 U. S. 399; *Braden v. United States*, 365 U. S. 431. With more particular reference to the present context of a state decision as to character qualifications, it is difficult, indeed, to imagine a view of the constitutional protections of speech and association which would automatically and without consideration of the extent of the deterrence of speech and association and of the importance of the state function, exclude all reference to prior speech or association on such issues as character, purpose, credibility, or intent. On the basis of these considerations we now judge petitioner's contentions in the present case.

Petitioner does not challenge the constitutionality of § 6064.1 of the California Business and Professions Code forbidding certification for admission to practice of those advocating the violent overthrow of government. It would indeed be difficult to argue that a belief, firm enough to be carried over into advocacy, in the use of illegal means to change the form of the State or Federal Government is an unimportant consideration in determining the fitness of applicants for membership in a pro-

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fession in whose hands so largely lies the safekeeping of this country's legal and political institutions. Cf. *Garner v. Los Angeles Board*, 341 U. S. 716. Nor is the state interest in this respect insubstantially related to the right which California claims to inquire about Communist Party membership. This Court has long since recognized the legitimacy of a statutory finding that membership in the Communist Party is not unrelated to the danger of use for such illegal ends of powers given for limited purposes. See *American Communications Assn. v. Douds*, 339 U. S. 382; see also *Barenblatt v. United States*, 360 U. S. 109, 128-129; cf. *Wilkinson v. United States*, 365 U. S. 399; *Braden v. United States*, 365 U. S. 431.

As regards the questioning of public employees relative to Communist Party membership it has already been held that the interest in not subjecting speech and association to the deterrence of subsequent disclosure is outweighed by the State's interest in ascertaining the fitness of the employee for the post he holds, and hence that such questioning does not infringe constitutional protections. *Beilan v. Board of Public Education*, 357 U. S. 399; *Garner v. Board of Public Works*, 341 U. S. 716. With respect to this same question of Communist Party membership, we regard the State's interest in having lawyers who are devoted to the law in its broadest sense, including not only its substantive provisions, but also its procedures for orderly change, as clearly sufficient to outweigh the minimal effect upon free association occasioned by compulsory disclosure in the circumstances here presented.

There is here no likelihood that deterrence of association may result from foreseeable private action, see *N. A. A. C. P. v. Alabama*, *supra*, at 462, for bar committee interrogations such as ~~are~~ are conducted in private. See Rule 58, Section X, Rules of Practice and Procedure of the Supreme Court of Illinois; cf. Cal. Bus. & Prof. Code, Rules of Procedure of the State Bar of

California, Rule 8; *Anonymous v. Baker*, 360 U. S. 287, 291-292. Nor is there the possibility that the State may be afforded the opportunity for imposing undetectable arbitrary consequences upon protected association, see *Shelton v. Tucker*, 364 U. S. 479, 486, for a bar applicant's exclusion by reason of Communist Party membership is subject to judicial review, including ultimate review by this Court, should it appear that such exclusion has rested on substantive or procedural factors that do not comport with the Federal Constitution. See *Konigsberg v. State Bar*, 353 U. S. 252; *Schwartz v. Board of Examiners of New Mexico*, 353 U. S. 232; cf. *Wieman v. Updegraff*, 344 U. S. 183. In these circumstances it is difficult indeed to perceive any solid basis for a claim of unconstitutional intrusion into rights assured by the Fourteenth Amendment.

If this were all there was to petitioner's claim of a privilege to refuse to answer, we would regard the *Beilan* case as controlling. There is, however, a further aspect of the matter. In *Speiser v. Randall*, 357 U. S. 513, we held unconstitutional a state procedural rule that in order to obtain an exemption a taxpayer must bear the burden of proof, including both the burdens of establishing a *prima facie* case and of ultimate persuasion that he did not advocate the violent overthrow of government. We said (p. 526):

"The vice of the present procedure is that, where particular speech falls close to the line separating the lawful and the unlawful, the possibility of mistaken fact-finding—inherent in all litigation—will create the danger that the legitimate utterance will be penalized. The man who knows that he must bring forth proof and persuade another of the lawfulness of his conduct necessarily must steer far wider of the unlawful zone than if the State must bear these burdens. This is especially to be feared when the

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complexity of the proofs and the generality of the standards applied, cf. *Dennis v. United States*, *supra*, provide but shifting sands on which the litigant must maintain his position. How can a claimant whose declaration is rejected possibly sustain the burden of proving the negative of these complex factual elements? In practical operation, therefore, this procedural device must necessarily produce a result which the State could not command directly. It can only result in a deterrence of speech which the Constitution makes free."

It would be a sufficient answer to any suggestion of the applicability of that holding to the present proceeding to observe that *Speiser* was explicitly limited so as not to reach cases where, as here, there is no showing of an intent to penalize political beliefs. Distinguishing *Garner v. Board of Public Works*, 341 U. S. 716; *Gerende v. Board of Supervisors*, 341 U. S. 56, and *American Communications Assn. v. Douds*, 339 U. S. 382, the Court said (p. 527):

"In these cases . . . there was no attempt directly to control speech but rather to protect, from an evil shown to be grave, some interest clearly within the sphere of governmental concern. . . . Each case concerned a limited class of persons in or aspiring to public positions by virtue of which they could, if evilly motivated, create serious danger to the public safety. The principal aim of those statutes was not to penalize political beliefs but to deny positions to persons supposed to be dangerous because the position might be misused to the detriment of the public."

But there are also additional factors making the rationale of *Speiser* inapplicable to the case before us. There is no unequivocal indication that California in this proceeding has placed upon petitioner the burden

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of proof of nonadvocacy of violent overthrow, as distinguished from its other requirement of "good moral character."¹² All it has presently required is an applicant's cooperation with the Committee's search for evidence of forbidden advocacy. Petitioner has been denied admission to the California bar for obstructing the Committee in the performance of its necessary functions of examination and cross-examination, a ruling which indeed presupposes that the burden of producing substantial evidence on the issue of advocacy was not upon petitioner but upon the Committee. Requiring a defendant in a civil proceeding to testify or to submit to discovery has never been thought to shift the burden of proof to him. Moreover, when this Court has allowed a State to comment upon a criminal defendant's failure to testify it has been careful to note that this does not result in placing upon him the burden of proving his innocence. *Adamson v. California*, 332 U. S. 46, 58.

In contrast to our knowledge with respect to the burden of establishing a prima facie case, we do not now know where, under California law, would rest the ultimate burden of persuasion on the issue of advocacy of violent overthrow. But it is for the Supreme Court of California first to decide this question. Only if and when that burden is placed by the State upon a bar-applicant can there be drawn in question the distinction made in the *Speiser* case between penalizing statutes and those merely denying access to positions where unfitness may lead to the abuse of state-given powers or privileges. The issue is not now before us.

¹² Indeed, we cannot tell whether California did so even in the earlier proceeding, since the California Supreme Court's denial of review of the Committee's original rejection of Konigsberg was without opinion, and for all we know may have rested alone on petitioner's failure to meet his state burden of proof as to "good moral character."

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Thus as matters now stand, there is nothing involved here which is contrary to the reasoning of *Speiser*, for despite compelled testimony the prospective bar applicant need not "steer far clear of the unlawful zone" (357 U. S. 526) for fear of mistaken judgment or fact finding declaring unlawful speech which is in fact protected by the Constitution. This is so as to the ultimate burden of persuasion for, notwithstanding his duty to testify, the loss resulting from a failure of proof may, for all we now know, still fall upon the State. It is likewise so as to the initial burden of production, for there is no indication in the proceeding on rehearing of petitioner's application that the Bar Committee expected petitioner to "sustain the burden of proving the negative" (357 U. S. 526) of those complex actual elements which amount to forbidden advocacy of violent overthrow. To the contrary it is clear that the Committee had assumed the burden of proving the affirmative of those elements, but was prevented from attempting to discharge that burden by petitioner's refusal to answer relevant questions.

The judgment of the Supreme Court of California is

Affirmed.

SUPREME COURT OF THE UNITED STATES

No. 28.—OCTOBER TERM, 1960.

Raphael Konigsberg, Petitioner.

v.

State Bar of California and the
Committee of Bar Examiners
of the State of California.

On Writ of Certiorari
to the Supreme Court
of the State of Cali-
fornia.

[April 24, 1961.]

MR. JUSTICE BLACK, with whom THE CHIEF JUSTICE and MR. JUSTICE DOUGLAS concur, dissenting.

When this case was here before, we reversed a judgment of the California Supreme Court barring the petitioner Konigsberg from the practice of law in that State on the ground that he had failed to carry the burden of proving his good moral character and that he did not advocate forcible overthrow of the government. In doing so, we held that there was "no evidence in the record" which could rationally justify such a conclusion.¹ Upon remand, the Supreme Court of California referred the matter back to the Committee of State Bar Examiners for further hearings, at which time Konigsberg presented even more evidence of his good character. The Committee produced no evidence whatever which tended in the slightest degree to reflect upon the good character and patriotism which we had already held Konigsberg to have established. The case is therefore now before us with the prior adjudication that Konigsberg possesses the requisite good character and patriotism for admission to the Bar unimpaired.

¹ *Konigsberg v. State Bar of California*, 353 U. S. 252, 273. That decision was reached on the basis of a record containing a large quantity of evidence favorable to Konigsberg and some scanty evidence arguably adverse to him.

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What the Committee did do upon remand was to repeat the identical questions with regard to Konigsberg's suspected association with Communists twenty years ago that it had asked and he had refused to answer at the first series of hearings. Konigsberg again refused to answer these questions and the Committee again refused to certify him as fit for admission to the Bar, this time on the ground that his refusal to answer had obstructed the required investigation into his qualifications, a ground subsequently adopted by a majority of the Supreme Court of that State.²

Thus, California purports to be denying Konigsberg admission to its Bar solely on the ground that he has refused to answer questions put to him by the Committee of Bar Examiners. But when the case was here before, we observed: "There is nothing in the California statutes, the California decisions, or even in the Rules of the Bar Committee, which has been called to our attention, that suggests that failure to answer a Bar Examiner's inquiry is, *ipso facto*, a basis for excluding an applicant from the Bar, irrespective of how overwhelming is his showing of good character or loyalty or how flimsy are the suspicions of the Bar Examiners." And we have been pointed to no subsequent California statutes, rules, regulations or court decisions which require or even permit rejection of a lawyer's application for admission solely because he refuses to answer questions.³ In this situation, it seems to

² *Konigsberg v. State Bar of California*, 52 Cal. 2d 769. Mr. Justice Traynor and Mr. Justice Peters dissented in separate opinions.
³ 353 U. S., at 260-261.

⁴ The total absence of any authoritative source for this rule is, in my judgment, merely accentuated by the reference in the majority opinion to the article written for the California State Bar Journal by the Secretary of the Committee of Bar Examiners. So far as the cases relied upon in that article are even available for study, they do not in any way support the action of the Bar Committee here.

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me that Konigsberg has been rejected on a ground that is not supported by any authoritatively declared rule of law for the State of California. This alone would be enough for me to vote to reverse the judgment. There are other reasons, however.

Konigsberg's objection to answering questions as to whether he is or was a member of the Communist Party has, from the very beginning, been based upon the contention that the guarantees of free speech and association of the First Amendment as made controlling upon the States by the Fourteenth Amendment preclude California from denying him admission to its Bar for refusing to answer such questions. In this I think Konigsberg has been correct. California has apparently not even attempted to make actual present membership in the Communist Party a bar to the practice of law, and even if it had, I assume it would not be contended that such a

Thus, it seems to me that California's rejection of Konigsberg is not supported by any "law of the land," as required by the Due Process and Equal Protection Clauses of the Fourteenth Amendment. See *Cohen v. Hurley*, decided today, post p. —, —. As Daniel Webster argued in the *Dartmouth College* case: "Are then these acts of the legislature, which affect only particular persons and their particular privileges, laws of the land? Let this question be answered by the text of Blackstone: 'And first, it is a law, not a rule; not a transient sudden order from a superior, to, or concerning, a particular person; but something permanent, uniform, and universal. Therefore, a particular act of the legislature to confiscate the goods of Titius, or to attain him of high treason, does not enter into the idea of a municipal law; for the operation of this act is spent upon Titius only, and has no relation to the community in general, it is rather a sentence than a law.' Lord Coke is equally decisive and emphatic. Citing and commenting on the celebrated 29th chap. of *Magna Charta*, he says, 'no man shall be disseized, &c. unless it be by the lawful judgment, that is, verdict of equals, or by the law of the land, that is, (to speak it once for all,) by the due course and process of law.'" (Emphasis as in source.) *Dartmouth College v. Woodward*, 4 Wheat. 518, 580-581.

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law could be applied to conduct that took place before the law was passed. For such an application would, I think, not only be a clear violation of the *ex post facto* provision of the Federal Constitution, but would also constitute a bill of attainder squarely within this Court's holdings in *Cummings v. Missouri*² and *Ex parte Garland*.³ And yet it seems to me that this record shows, beyond any shadow of a doubt, that the reason *Konigsberg* has been rejected is because the Committee suspects that he was at one time a member of the Communist Party.⁴ I agree with the implication of the majority opinion that this is not an adequate ground to reject *Konigsberg* and that it could not be constitutionally defended.

The majority avoids the otherwise unavoidable necessity of reversing the judgment below on that ground by simply refusing to look beyond the reason given by the Committee to justify *Konigsberg's* rejection. In this way, the majority reaches the question as to whether the Committee can constitutionally reject *Konigsberg* for refusing to answer questions growing out of his conjee-

² 4 Wall. 277.

³ 4 Wall. 333.

⁴ The suspicions of the Committee doubtless relate to the period around 1941 for the Committee had heard testimony from an ex-Communist that *Konigsberg* had attended meetings of a Communist Party unit during that period. The unreliability of that testimony was discussed in the Court's opinion when the case was here before. See 353 U. S. at 266-268.

⁵ Under the circumstances of this case, it seems clear to me that the action of the State of California in rejecting *Konigsberg* is also contrary to our decision in *Schwartz v. Board of Bar Examiners of New Mexico*, 353 U. S. 232. In that case, every member of this Court who participated in the decision expressed serious doubts with regard to the probative value of evidence as to a Bar applicant's membership in the Communist Party 15 years previous to our consideration of the case. *Id.* at 246, 251. I cannot believe that such evidence becomes more probative when, as here, it would, if obtained, have been five years older.

tured past membership in the Communist Party even though it could not constitutionally reject him if he did answer those questions and his answers happened to be affirmative. The majority then goes on to hold that the Committee, by virtue of its power to reject applicants who advocate the violent overthrow of the government, can reject applicants who refuse to answer questions in any way related to that fact, even though the applicant has sworn under oath that he does not advocate violent overthrow of the government and even though, as the majority concedes, questions as to the political associations of an applicant subject "speech and association to the deterrence of subsequent disclosure." I cannot agree with that holding.

The recognition that California has subjected "speech and association to the deterrence of subsequent disclosure" is, under the First Amendment, sufficient in itself to render the action of the State unconstitutional unless one subscribes to the doctrine that permits constitutionally protected rights to be "balanced" away whenever a majority of this Court thinks that a State might have interest sufficient to justify abridgment of those freedoms. As I have indicated many times before,¹⁰ I do not subscribe to that doctrine for I believe that the First Amendment's unequivocal command that there shall be no abridgment of the rights of free speech and assembly shows that the men who drafted our Bill of Rights did all the "balancing" that was to be done in this field. The history of the First Amendment is too well-known to require repeating here except to say that it certainly

¹⁰ See, e. g., my dissenting opinions in *Braden v. United States*, 365 U. S. 431, 441-446; *Wilkinson v. United States*, 365 U. S. 399, 422, 423; *Lipman v. Wymore*, 364 U. S. 381, 392-393; *Baresblatt v. United States*, 360 U. S. 109, 140-144; *American Communications Assn. v. Douds*, 339 U. S. 382, 445-453.

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cannot be denied that the very object of adopting the First Amendment, as well as the other provisions of the Bill of Rights, was to put the freedoms protected there completely out of the area of any congressional control that may be attempted through the exercise of precisely those powers that are now being used to "balance" the Bill of Rights out of existence.¹¹ Of course, the First Amendment originally applied only to the Federal Government and did not apply to the States. But what was originally true only of Congress is now no less true with respect to the governments of the States, unless a majority of this Court wants to overrule a large number of cases in which it has been held unequivocally that the Fourteenth Amendment made the First Amendment's provisions controlling upon the States.¹²

The Court attempts to justify its refusal to apply the plain mandate of the First Amendment in part by reference to the so-called "clear and present danger test" forcefully used by Mr. Justice Holmes and Mr. Justice Brandeis, not to narrow but to broaden the then prevailing interpretation of First Amendment freedoms.¹³ I

¹¹ James Madison, for example, indicated clearly that he did not understand the Bill of Rights to permit any encroachments upon the freedoms it was designed to protect. "If they [the first ten Amendments] are incorporated into the constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the constitution by the declaration of rights." 1 Annals of Congress 439 (1789). (Emphasis supplied.)

¹² See, e. g., *Minersville District v. Gobitis*, 310 U. S. 586, 593; *Murdock v. Pennsylvania*, 319 U. S. 105, 108; *Board of Education v. Barnette*, 319 U. S. 624, 639; *Staub v. City of Baxley*, 355 U. S. 313, 321.

¹³ See *Schenck v. United States*, 249 U. S. 47, 52, where Mr. Justice Holmes, writing for the Court, said: "The question in every case is

think very little can be found in anything they ever said that would provide support for the "balancing test" presently in use. Indeed, the idea of "balancing" away First Amendment freedoms appears to me to be wholly inconsistent with the view, strongly espoused by Justices Holmes and Brandeis, that the best test of truth is the power of the thought to get itself accepted in the competition of the market.¹⁴ The "clear and present danger test" was urged as consistent with this view in that it protected speech in all cases except those in which danger was so imminent that there was no time for rational discussion.¹⁵ The "balancing test," on the other hand, rests upon the notion that some ideas are so dangerous that the government need not restrict itself to contrary arguments as a means of opposing them even where there is ample time to do so. Thus here, where there is not a semblance of a "clear and present danger," and where there is more than ample time in which to combat by discussion any idea which may be involved, the majority permits the State of California to adopt

whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

¹⁴ *Abrams v. United States*, 250 U. S. 616, 630 (Holmes, J., dissenting). See also *Gillow v. New York*, 268 U. S. 652, 673: "If in the long run the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way." (Holmes, J., dissenting.) And see *Whitney v. California*, 274 U. S. 357, 378: "Among free men, the deterrents ordinarily to be applied to prevent crime are education and punishment for violations of the law, not abridgment of the rights of free speech and assembly." (Brandeis, J., concurring.)

¹⁵ See *Abrams v. United States*, 250 U. S. 616, 630-631 (dissenting opinion); *Gillow v. United States*, 268 U. S. 652, 672-673 (dissenting opinion); *Whitney v. California*, 274 U. S. 357, 378-379 (concurring opinion).

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measures calculated to suppress the advocacy of views about governmental affairs.

I recognize, of course, that the "clear and present danger test," though itself a great advance toward individual liberty over some previous notions of the protections afforded by the First Amendment,¹⁶ does not go as far as my own views as to the protection that should be accorded these freedoms. I agree with Justices Holmes and Brandeis, however, that the primary purpose of the First Amendment was to insure that all ideas would be allowed to enter the "competition of the market." But I fear that the creation of "tests" by which speech is left unprotected under certain circumstances is a standing invitation to abridge it. This is nowhere more clearly indicated than by the sudden transformation of the "clear and present danger test" in *Dennis v. United States*. In that case, this Court accepted Judge Learned Hand's "restatement" of the "clear and present danger test": "In each case [courts] must ask whether the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger."¹⁷ After the "clear and present danger test" was diluted and weakened by being recast in terms of this "balancing" formula, there seems to me to be much room to doubt that Justices Holmes and Brandeis would even have recognized their test. And the reliance upon that weakened "test" by the majority here, without even so much as an attempt to find either a "clear" or a "present" danger, is only another persuasive reason for rejecting all such "tests" and enforcing the First Amendment according to its terms.

The Court suggests that a "literal reading of the First Amendment" would be totally unreasonable because it

¹⁶ See *Bridges v. California*, 314 U. S. 252, 260-263.

¹⁷ 183 F. 2d 201, 212; 341 U. S. 494, 510.

would invalidate many widely accepted laws. I do not know to what extent this is true. I do not believe, for example, that it would invalidate laws resting upon the premise that where speech is an integral part of unlawful conduct that is going on at the time, the speech can be used to illustrate, emphasize and establish the unlawful conduct.¹⁸ On the other hand, it certainly would invalidate all laws that abridge the right of the people to discuss matters of religious or public interest, in the broadest meaning of those terms, for it is clear that a desire to protect this right was the primary purpose of the First Amendment. Some people have argued, with much force, that the freedoms guaranteed by the First Amendment are limited to somewhat broad areas like those.¹⁹ But I believe this Nation's security and tranquility can best be served by giving the First Amendment the same broad construction that all Bill of Rights guarantees deserve.²⁰

The danger of failing to construe the First Amendment in this manner is, I think, dramatically illustrated by the decision of this Court in *Beauharnais v. Illinois*,²¹ one of the cases relied upon for this holding today. In that case, a majority of this Court upheld the conviction of a man whose only "crime" was the circulation of a petition

¹⁸ *Roth v. United States*, 354 U. S. 476, 514 (dissenting opinion). See also *Labor Board v. Virginia Electric & Power Co.*, 314 U. S. 469; *Giboney v. Empire Storage Co.*, 336 U. S. 490.

¹⁹ See, e. g., Menckeljohn, What Does the First Amendment Mean?, 20 U. of Chi. L. Rev. 461, 464.

²⁰ Cf. *Boyd v. United States*, 116 U. S. 616, 635; "[C]onstitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."

²¹ 343 U. S. 250.

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to be presented to the City Council of Chicago urging that body to follow a policy of racial segregation in language that the State of Illinois chose to regard as "libelous" against Negroes. Holding that "libelous utterances" were not included in the "speech" protected against state invasion by the Due Process Clause of the Fourteenth Amendment,²² this Court there concluded that the petition which had been circulated fell within that exception and therefore outside the area of constitutionally protected speech because it made charges against the entire Negro population of this country. Thus, *Beauharnais* was held to have simultaneously "libelled" some fifteen million people. And by this tremendous expansion of the concept of "libel," what some people might regard as a relatively minor exception to the full protection of freedom of speech had suddenly become a vehicle which could be used to justify a return to the vicious era of the law of seditious libel, in which the political party in power, both in England and in this country, used such laws to put their opponents in jail.²³

²² The Court opinion here apparently treats the *Beauharnais* case as having decided that the Federal Government has power, despite the First Amendment, to pass so-called "group libel" laws. This, I think, is wholly unjustified. The *Beauharnais* opinion was written on the assumption that the protection afforded the freedoms of speech and petition against state action by the Fourteenth Amendment amounted to something less than the protection afforded these freedoms against congressional action by the First Amendment. Thus, as pointed out in my dissent in that case, the majority in *Beauharnais* never even mentioned the First Amendment but upheld the state "group libel" law on the ground that it did not violate "civilized canons of decency or reasonableness, etc." See 343 U. S., at 268-269. See also the dissent of Mr. Justice Jackson, at 287-305.

²³ The story of the use by the Federalists of the Alien and Sedition Acts of 1798 as a weapon to suppress the political opposition of the Jeffersonians has been graphically told in Bowers, *Jefferson and Hamilton*, at 362-411.

Whatever may be the wisdom, however, of an approach that would reject exceptions to the plain language of the First Amendment based upon such things as "libel," "obscenity" ²⁴ or "fighting words," ²⁵ such is not the issue in this case. For the majority does not, and surely would not, contend that the kind of speech involved in this case—wholly related as it is to conflicting ideas about governmental affairs and policies—falls outside the protection of the First Amendment, however narrowly that Amendment may be interpreted. So the only issue presently before us is whether speech that must be well within the protection of the Amendment should be given complete protection or whether it is entitled only to such protection as is consistent in the minds of a majority of this Court with whatever interest the Government may be asserting to justify its abridgment. The Court, by stating unequivocally that there are no "absolutes" under the First Amendment, necessarily takes the position that even speech that is admittedly protected by the First Amendment is subject to the "balancing test" and that therefore no kind of speech is to be protected if the Government can assert an interest of sufficient weight to induce this Court to uphold its abridgment. In my judgment, such a sweeping denial of the existence of any inalienable right to speak undermines the very foundation upon which the First Amendment, the Bill of Rights, and, indeed, our entire structure of government rests. ²⁶ The

²⁴ See, e. g., *Roth v. United States*, 354 U. S. 476.

²⁵ See, e. g., *Chaplinsky v. New Hampshire*, 315 U. S. 568.

²⁶ "The founders of our federal government were too close to oppressions and persecutions of the unorthodox, the unpopular, and the less influential to trust even elected representatives with unlimited powers of control over the individual. From their distrust were derived the first ten amendments, designed as a whole to limit and qualify the powers of Government, to define cases in which the Government ought not to act, or to act only in a particular mode, and to protect unpopular minorities from oppressive majorities. 1 Annals

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Founders of this Nation attempted to set up a limited government which left certain rights in the people—rights that could not be taken away without amendment of the basic charter of government. The majority's "balancing test" tells us that this is not so. It tells us that no right to think, speak or publish exists in the people that cannot be taken away if the Government finds it sufficiently imperative or expedient to do so. Thus the "balancing test" turns our "Government of the people, by the people and for the people" into a government over the people.

I cannot believe that this Court would adhere to the "balancing test" to the limit of its logic. Since that "test" denies that any speech, publication or petition has an "absolute" right to protection under the First Amendment, strict adherence to it would necessarily mean that there would be only a conditional right, not a complete right, for any American to express his views to his neighbors—or for his neighbors to hear those views. In other words, not even a candidate for public office, high or low, would have an "absolute" right to speak in behalf of his candidacy, no newspaper would have an "absolute" right to print its opinion on public governmental affairs, and the American people would have no "absolute" right to hear such discussions. All of these rights would be dependent upon the accuracy of the scales upon which this Court weighs the respective interests of the Government and the people. It therefore seems to me that the Court's

437. The first of the ten amendments erected a Constitutional shelter for the people's liberties of religion, speech, press, and assembly. This amendment reflects the faith that a good society is not static but advancing, and that the fullest possible interchange of ideas and beliefs is essential to attainment of this goal. The proponents of the First Amendment, committed to this faith, were determined that every American should possess an unrestrained freedom to express his views, however odious they might be to vested interests whose power they might challenge." *Feldman v. United States*, 322 U. S. 87, 501 (dissenting opinion).

"absolute" statement that there are no "absolutes" under the First Amendment must be an exaggeration of its own views.

These examples also serve to illustrate the difference between the sort of "balancing" that the majority has been doing and the sort of "balancing" that was intended when that concept was first accepted as a method for insuring the complete protection of First Amendment freedoms even against purely incidental or inadvertent consequences. The term came into use chiefly as a result of the cases in which the power of municipalities to keep their streets open for normal traffic was attacked by groups wishing to use those streets for religious or political purposes.²⁷ When those cases came before this Court, we did not treat the issue posed by them as one primarily involving First Amendment rights. Recognizing instead that public streets are avenues of travel which must be kept open for that purpose, we upheld various city ordinances designed to prevent unnecessary noises and congestions that disrupt the normal and necessary flow of traffic. In doing so, however, we recognized that the enforcement of even these ordinances, which attempted no regulation at all of the content of speech and which were neither openly nor surreptitiously aimed at speech, could bring about an "incidental" abridgment of speech. So we went on to point out that even ordinances directed at and regulating only conduct might be invalidated if, after "weighing" the reasons for regulating the particular conduct, we found them insufficient to justify diminishing "the exercise of rights so vital to the maintenance of democratic institutions" as those of the First Amendment.²⁸

²⁷ Typical of such cases are those referred to by the majority in its opinion here: *Schneider v. State*, 308 U. S. 147; *Cox v. New Hampshire*, 312 U. S. 569; *Prince v. Massachusetts*, 321 U. S. 158; *Kovacs v. Cooper*, 336 U. S. 77.

²⁸ *Schneider v. State*, 308 U. S. 147, 161.

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But those cases never intimated that we would uphold as constitutional an ordinance which purported to rest upon the power of a city to regulate traffic but which was aimed at speech or attempted to regulate the content of speech. None of them held, nor could they constitutionally have held, that a person rightfully walking or riding along the streets and talking in a normal way could have his views controlled, licensed or penalized in any way by the city—for that would be a direct abridgment of speech itself. Those cases have only begun to take on that meaning by being relied upon, again and again as they are here, to justify the application of the “balancing test” to governmental action that is aimed at speech and depends for its application upon the content of speech. Thus, those cases have been used to support decisions upholding such obviously antispeech actions on the part of government as those involved in *American Communications Assn. v. Douds*²⁹ and *Dennis v. United States*.³⁰ And the use being made of those cases here must be considered as falling squarely within that class.³¹

The Court seeks to bring this case under the authority of the street-regulation cases and defend its use of the “balancing test” on the ground that California is attempting only to exercise its permissible power to regulate its Bar and that any effect its action may have upon speech is purely “incidental.” But I cannot agree that the questions asked Konigsberg with regard to his suspected membership in the Communist Party had nothing more than an “incidental” effect upon his freedom of speech and association. Why does the Committee of Bar-Examiners ask a bar applicant whether he is or has been a

²⁹ 339 U. S. 382, especially at 398-400.

³⁰ 341 U. S. 494, especially at 508-509.

³¹ See also the discussion of these street-regulation cases in my dissenting opinion in *Barenblatt v. United States*, 360 U. S. 109.

member of the Communist Party? The avowed purpose of such questioning is to permit the Committee to deny applicants admission to the Bar if they "advocate" forcible overthrow of the government. Indeed, that is precisely the ground upon which the majority is here upholding the Committee's right to ask Konigsberg these questions. I realize that there has been considerable talk, even in the opinions of this Court, to the effect that "advocacy" is not "speech." But with the highest respect for those who believe that there is such a distinction, I cannot agree with it. For this reason, I think the conclusion is inescapable that this case presents the question of the constitutionality of action by the State of California designed to control the content of speech. As such, it is a "direct" and not an "incidental" abridgment of speech. Indeed, if the characterization "incidental" were appropriate here, it would be difficult to imagine what would constitute a "direct" abridgment of speech. The use of the "balancing test" under these circumstances thus permits California directly to abridge speech in explicit contradiction to the plain mandate of the First Amendment.

But even if I thought the majority was correct in its view that "balancing" is proper in this case, I could not agree with its decision. In the first place, I think that the decision here is unduly restrictive upon individual liberty even under the penurious "balancing test." The majority describes the State's interest which is here to be "balanced" against the interest in protecting the freedoms of speech and association as an interest in "having lawyers who are devoted to the law, in its broadest sense, including not only its substantive provisions but also its procedures for orderly change." But is that an accurate statement of the interest of the State that is really at stake here? Konigsberg has stated unequivocally that he never has, does not now, and never will advocate the overthrow of the government of this country by uncon-

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stitutional means, and we held when the case was here before that his evidence was sufficient to establish that fact. Since the Committee has introduced no evidence at any subsequent hearing that would lead to a contrary conclusion, the fact remains established.¹² So the issue in this case is not, as the majority's statement of the State's interest would seem to indicate, whether a person who advocates the overthrow of existing government by force must be admitted to the practice of law. All we really have on the State's side of the scales is its desire to know whether Konigsberg was ever a member of the Communist Party.

The real lack of value of that information to the State is, to my mind, clearly shown by the fact that the State has not even attempted to make membership in the Communist Party a ground for disqualification from the Bar. Indeed, if the State's only real interest was, as the majority maintains, in having good men for its Bar, how could it have rejected Konigsberg, who, undeniably and as this Court has already held, has provided overwhelming evidence of his good character? Our former decision, which I still regard as resting on what is basically just good common sense, was that a man does not have to tell all about his previous beliefs and associations in order to establish his good character and loyalty.

When the majority turns to the interest on the other side of the scale, it admits that its decision is likely to have "adverse effects upon free association caused by compulsory disclosures," but then goes on to say that

¹² The majority place some stress upon the fact that the Committee did not have independent investigatory resources with which to seek further evidence. In view of the complete reliance upon this decision to justify the use of an identical procedure in *In re Anastaplo*, decided today, *post*, p. —, where the Bar admission committee not only had investigatory resources but also utilized them to the fullest, this fact must be of little weight in the constitutional "balance."

those adverse effects will be "minimal" here, first, because Bar admission interrogations are private and, secondly, because the decisions of Bar admission committees are subject to judicial review. As to the first ground, the Court simply ignores the fact that California law does not require its Committee to treat information given it as confidential.³³ And besides, it taxes credulity to suppose that questions asked an applicant and answers given by him in the highly emotional area of communism would not rapidly leak out to the great injury of an applicant—regardless of what the facts of his particular case may happen to be. As to the second ground given, the Court fails to take into account the fact that judicial review widens the publicity of the questions and answers and thus tends further to undercut its first ground. At the same time, such review, as is demonstrated by this and the companion case decided today,³⁴ provides small hope that an applicant will be afforded relief against stubborn efforts to destroy him arbitrarily by innuendoes that will subject him to lasting suspicions. But even if I thought the Court was correct in its beliefs that the interrogation of a Bar applicant would be kept confidential and that judicial review is adequate to prevent arbitrary exclusions from the Bar, I could not accept its conclusion that the First Amendment rights involved in this case are "minimal."

The interest in free association at stake here is not merely the personal interest of petitioner in being free from burdens that may be imposed upon him for his past

³³ In this regard, the situation is identical to that invalidated as unconstitutional by our decision in *Shelton v. Tucker*, 364 U. S. 479. Indeed, the absence of such a requirement was there stressed as an important part of the ground upon which that decision rested. *Id.* at 486.

³⁴ *In re Anastaplo*, *supra*. See particularly the discussion in my dissenting opinion in that case, at p. —.

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beliefs and associations. It is the interest of all the people in having a society in which no one is intimidated with respect to his beliefs or associations. It seems plain to me that the inevitable effect of the majority's decision is to condone a practice that will have a substantial deterrent effect upon the associations entered into by anyone who may want to become a lawyer in California. If every person who wants to be a lawyer is to be required to account for his associations as a prerequisite to admission into the practice of law, the only safe course for those desiring admission would seem to be scrupulously to avoid association with any organization that advocates anything at all somebody might possibly be against, including groups whose activities are constitutionally protected under even the most restricted notion of the First Amendment. And, in the currently prevailing atmosphere in this country, I can think of few organizations active in favor of civil liberties that are not highly controversial. In addition, it seems equally clear that anyone who had already associated himself with an organization active in favor of civil liberties before he developed an interest in the law, would, after this case, be discouraged from spending the large amounts of time and money necessary to obtain a legal education in the hope that he could practice law in California.

Thus, in my view, the majority has reached its decision here against the freedoms of the First Amendment by a

²⁹ The situation here is thus identical to that in *Speyer v. Randall*, where the Court expressly recognized the danger to protected associations. See 357 U. S. 513, 526.

³⁰ Cf. *Shelton v. Tucker*, *supra*, at 486, n. 7, where we took note of testimony that efforts were being made to remove from a school system all teachers who supported such organizations as the American Civil Liberties Union, the Urban League, the American Association of University Professors, and the Women's Emergency Committee to Open Our Schools.

fundamental misapplication of its own currently, but I hope only temporarily, prevailing "balancing" test. The interest of the Committee in satisfying its curiosity with respect to Königsberg's "possible" membership in the Communist Party two decades ago has been inflated out of all proportion to its real value—the vast interest of the public in maintaining unabridged the basic freedoms of speech, press and assembly has been paid little if anything more than lip service—and important constitutional rights have once again been "balanced" away. This, of course, is an ever-present danger of the "balancing test" for the application of such a test is necessarily tied to the emphasis particular judges give to competing societal values. Judges, like everyone else, vary tremendously in their choice of values. This is perfectly natural and, indeed, unavoidable. But it is neither natural nor unavoidable in this country for the fundamental rights of the people to be dependent upon the different emphasis different judges put upon different values at different times. For those rights, particularly the First Amendment rights involved here, were unequivocally set out by the Founders in our Bill of Rights in the very plainest of language, and they should not be diluted by "tests" that obliterate them whenever particular judges think values they most highly cherish outweigh the values most highly cherished by the Founders.

Moreover, it seems to me that the "balancing test" is here being applied to cut the heart out of one of the very few liberty-protecting decisions that this Court has rendered in the last decade. *Speiser v. Randall* struck down, as a violation of the Federal Constitution, a state law which denied tax exemptions to veterans who refused to sign an oath that they did not advocate "the overthrow of the Government of the United States or of the State of

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California by force or violence or other unlawful means³⁸ The case arose when certain veterans insisted upon their right to the exemptions without signing the oath. The California Supreme Court rejected the veterans' constitutional contention that the state law violated due process by placing the burden of proof upon the taxpayer to prove that he did not advocate violent overthrow of the government. This Court reversed, with only one Justice dissenting, on the ground that the necessary effect of such an imposition of the burden of proof "can only result in a deterrence of speech which the Constitution makes free."³⁹ Indeed, the majority opinion in the *Speiser* case distinguished the very cases upon which the majority here is relying on the ground that "the oaths required in those cases performed a very different function from the declaration in issue here. In the earlier cases it appears that the loyalty oath, once signed, became conclusive evidence of the facts attested so far as the right to office was concerned. If the person took the oath he retained his position. The oath was not part of a device to shift to the officeholder the burden of proving his right to retain his position."⁴⁰ But that is precisely what is happening here. For, even though *Konigsberg* has taken an oath that he does not advocate the violent overthrow of the government, the Committee has persisted in the view that he has not as yet demonstrated his right to admission to the Bar. If that does not amount to the

³⁸ Section 32 of the California Revenue and Taxation Code. This section was set out in full in the majority opinion in *Speiser*. 357 U. S., at 516-517, n. 2.

³⁹ 357 U. S., at 526.

⁴⁰ *Id.* at 528. The cases so distinguished were *Garner v. Board of Public Works*, 341 U. S. 716; *Gerende v. Board of Supervisors*, 341 U. S. 56, and *American Communications Ass'n. v. Douds*, 339 U. S. 382.

sort of shifting of the burden of proof, that is proscribed by *Speiser*, I do not know what would.

The situation in the present case is closely analogous to that condemned in the *Speiser* case and, indeed, the major factual difference between the two cases tends to make this case an even stronger one. Here, as in *Speiser*, the State requires an oath that the person involved does not advocate violent overthrow of the government. Here, as there, the taking of the oath is not conclusive of the rights of the person involved. And here, as there, contrary to the implications in the majority opinion, I think it clear that the State places upon each applicant for admission to the Bar the burden of proving that he does not advocate the violent overthrow of the government. There is one difference between the two cases, for here *Konigsberg* agreed to take the oath required and he refused to answer only when the State insisted upon more. Surely he cannot be penalized for his greater willingness to cooperate with the State.

The majority also suggests that the *Speiser* case may be distinguishable because it involved merely the power of the State to impose a penalty, by way of a heavier tax burden, upon a person who refused to take an oath, while this case involves the power of the State to determine the qualifications a person must have to be admitted to the Bar—a position of importance to the public. This distinction seems to me to be little more than a play on words. *Speiser* had the burden of proving that he did not advocate the overthrow of the government and, upon his refusal to satisfy this burden, he was forced to pay additional taxes as a penalty. *Konigsberg* has the burden of proving that he does not advocate the violent overthrow of the government and, upon his supposed failure to meet this burden, he is being denied an opportunity to practice the profession for which he has expended much

time and money to prepare himself. So far as I am concerned the consequences to Konigsberg, whether considered from a financial standpoint, a social standpoint, or any other standpoint I can think of, constitute a more serious "penalty" than that imposed upon Speiser.

In my judgment this case must take its place in the ever-lengthening line of cases in which individual liberty to think, speak, write, associate and petition is being abridged in a manner precisely contrary to the explicit commands of the First Amendment.⁴ And I believe the abridgment of liberty here, as in most of the other cases in that line, is based upon nothing more than a fear that the American people can be alienated from their allegiance to our form of government by the talk of zealots for a form of government that is hostile to everything for which this country now stands or ever has stood. I think this fear is groundless for I believe that the loyalty and patriotism of the American people toward our own free way of life are too deeply rooted to be shaken by mere talk or argument from people who are wedded to totalitarian forms of government. It was this kind of faith in the American people that brought about the adoption of the First Amendment, which was expressly designed to let people say what they wanted to about government—even against government if they were so inclined. The idea underlying this then revolutionary idea of freedom was that the Constitution had set up a government so favorable to individual liberty that arguments against that government would fall harmless at the feet of a satisfied and happy citizenship. Thomas Jefferson voiced this idea with simple eloquence on the occasion of his first inauguration as President of the

⁴ This line has already been considerably lengthened during this very Term of Court. See, e. g., *Uphaus v. Wyman*, 364 U. S. 388; *Times Film Corp. v. City of Chicago*, 365 U. S. 43; *Wilkinson v. United States*, 365 U. S. 399; *Braden v. United States*, 365 U. S. 431.

United States: "If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it."

In the main, this is the philosophy under which this country has lived and prospered since its creation. There have, however, been two notable exceptions, the first being the period of the short-lived and unlamented alien and sedition laws of the late 1700's, and the other being the period since the beginning of the "cold war" shortly after the close of World War II, in which there has been a widespread fear of an imagined overwhelming persuasiveness in Communist arguments. The most commonly offered justification for the liberty-stifling measures that have characterized this latter period is that the Communists do not themselves believe in the freedoms of speech, press and assembly so they should not be allowed to take advantage of the freedoms our Constitution provides. But, as illustrated by this and many other cases, the effect of repressive laws and inquisitions of this kind cannot be and is not limited to Communists.⁴² Moreover, the fact that Communists practice repression of

⁴² Thomas Jefferson, First Inaugural Address, March 4, 1801. This address is reprinted in Jones, *Primer of Intellectual Freedom* 142 (Harvard University Press, 1949).

⁴³ "Centuries of experience testify that laws aimed at one political or religious group, however rational these laws may be in their beginnings, generate hatreds and prejudices which rapidly spread beyond control. Too often it is fear which inspires such passions, and nothing is more reckless or contagious. In the resulting hysteria, popular indignation tars with the same brush all those who have ever been associated with any member of the group under attack or who hold a view which, though supported by revered Americans as essential to democracy, has been adopted by that group for its own purposes." *American Communications Ass'n. v. Douds*, 339 U. S. 382, 448-449 (dissenting opinion).

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these freedoms is, in my judgment, the last reason in the world that we should do so. We do not have to imitate the Communists in order to survive. Our Bill of Rights placed our survival upon a firmer ground—that of freedom, not repression.

Nothing in this record shows that Konigsberg has ever been guilty of any conduct that threatens our safety. Quite the contrary, the record indicates that we are fortunate to have men like him in this country for it shows that Konigsberg is a man of firm convictions who has stood up and supported this country's freedom in peace and in war. The writings that the record shows he has published constitute vehement protests against the idea of overthrowing this government by force. No witness could be found throughout the long years of this inquisition who could say, or even who would say, that Konigsberg has ever raised his voice or his hand against his country. He is, therefore, but another victim of the prevailing fashion of destroying men for the views it is suspected they might entertain.

SUPREME COURT OF THE UNITED STATES

No. 28.—OCTOBER TERM, 1960.

Raphael Konigsberg, Petitioner,

v.
State Bar of California and the
Committee of Bar Examiners
of the State of California.

On Writ of Certiorari
to the Supreme Court
of the State of Cali-
fornia.

[April 24, 1961.]

MR. JUSTICE BRENNAN, with whom THE CHIEF JUSTICE joins, dissenting.

This judgment must be reversed even if we assume with Mr. Justice Traynor in his dissent in the California Supreme Court, 52 Cal. 2d 769, 774, at 776, that "a question as to present or past membership in [the Communist Party] is relevant to the issue of possible criminal advocacy and hence to [Konigsberg's] qualifications." The Committee did not come forward, in the proceeding we passed upon in 353 U. S. 252, nor in the subsequent proceeding, with evidence to show that Konigsberg unlawfully advocated the overthrow of the government. Under our decision in *Speiser v. Randall*, 357 U. S. 513, the Fourteenth Amendment therefore protects Konigsberg from being denied admission to the Bar for his refusal to answer the questions. In *Speiser* we held that "... when the constitutional right to speak is sought to be deterred by a State's general taxing program due process demands that the speech be unencumbered until the State comes forward with sufficient proof to justify its inhibition." 357 U. S., pp. 528-529. "There may be differences of degree," Mr. Justice Traynor said, "in the public interest in the fitness of the applicants for tax exemption and for admission to the Bar"; yet, as to the latter also, "Such a procedure is logically dictated by *Speiser*."

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52 Cal. 2d, p. 776. And unless mere whimsy governs this Court's decisions in situations impossible rationally to distinguish, such a procedure is indeed constitutionally required here. The same reasons apply. For Mr. Justice Traynor was entirely right in saying: "Whatever its relevancy [the question as to past or present Party membership] in a particular context, . . . it is an extraordinary variant of the usual inquiry into crime, for the attendant burden of proof upon any one under question poses the immediate threat of prior restraint upon the free speech of all applicants. The possibility of inquiry into their speech, the heavy burden upon them to establish its innocence, and the evil repercussions of inquiry despite innocence, would constrain them to speak their minds so noncommittally that no one could ever mistake their innocuous words for advocacy. This grave danger to freedom of speech could be averted without loss to legitimate investigation by shifting the burden to the examiners. Confronted with a prima facie case, an applicant would then be obliged to rebut it." *Id.*, p. 776.

The Court admits the complete absence of any such predicate by the Committee for its questions. The Court attempts to distinguish the situations in order to escape the controlling authority of *Speiser*. The speciousness of its reasoning is exposed in Mr. Justice Black's dissent. I would reverse.

